THE LAW

OF

NEWSPAPER LIBEL.

WITH SPECIAL REFERENCE TO THE STATE OF THE LAW
AS DEFINED BY

The Law of Libel Amendment Act, 1888,

AND ALL PRECEDING ACTS UPON THE SUBJECT

AND

The full Text of all the Libel Acts and a Report of every Important Case to Date.

BY

RICHARD J. KELLY,

BARRISTER-AT LAW.

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To

SIR CHARLES RUSSELL, Q.C., M.P.,

THIS BOOK IS,

WITH HIS PERMISSION,

RESPECTFULLY DEDICATED

BY THE AUTHOR.

PREFACE.

THIS book does not presume to be a complete and exhaustive exposition of the law of libel as it is illustrated and exemplified in the authoritative decisions of the Courts upon the several branches of that very complex subject. It aims simply at being a handy, practical, timely treatise on the law as affected and defined by the Acts of 1881 and 1888. While necessarily giving a general idea of the offence of libel, I endeavour, by reference to cases where the law has been found sufficient or defective, to show how far those intended measures of reform have gone in protecting or failing to protect the legitimate exercise of the rights of the Press, and how much yet remains to be done in the desirable direction of amendment—desirable as much in the interests of the public as of the Press itself. I have, therefore, after a brief but requisite notice of the general offences of libel and slander, as contradistinguished, proceeded to deal with the various phases of the subject as they most naturally suggest themselves — phases into which almost all modern decisions insensibly divide themselves. As the work deals exclusively with libel, and mainly with that form of it which finds its way into the public papers, almost every defamatory act can be classified under some one of the several heads of the several chapters of this book as being either excesses of the privilege of legitimate public comment or as breaches

of the prerogative of privileged reports as these rights are defined and declared by the Acts of 1881 and 1888, which were the first legislative attempts to deal with these aspects of the general question. That a fair, honest, *bonâ fide* report of the proceedings of any public meeting should be absolutely protected has now at last come to be recognised, and the main purpose of recent enactments was to settle that matter beyond any possibility of doubt. The immunity thus sought to be imparted to fair reports has, however, been considerably imperilled by an untoward decision of the House of Lords in the case of *McDougall* v. *Knight* (5 T. L. R. 421), which is of such considerable importance that I deem it right to give in full the grounds and reasons of that remarkable decision as contrasted with the more prudent reasons for a contrary view expressed in the reversed ruling in the same issue by the Court of Appeal. One cannot but feel that the present state of the law as declared by that final decision is so unsatisfactory as to call for immediate redress, and one cannot but feel also that it was never contemplated that there should ever be any question or doubt of the *primâ facie* impartiality of a judge's charge or the judgment of a Court. To constitute a mere reporter who attends to report such utterances, or the editor who revises them in the printing-office, judges of such matters, as is the effect of that decision, is to invest them with an authority and a responsibility they do not seek and are not qualified to discharge, while it casts an undeserved reflection upon judicial utterances which a long experience of their characteristic fairness does not warrant or justify. This is a defect which so imperatively suggests alteration as to need no argument to recommend the change

to the sense of the Legislature. Except for that deficiency the law as regulating the reports of public meetings held for a lawful purpose has at last been reduced to an intelligible and proper form, and in effecting this purpose the most useful function of the Press is safeguarded.

As to the legitimate limits of public criticism, the principles now regulating and controlling that necessary exercise of the duty of publicists have had their latest authoritative exposition in the case of *Merivale and Wife* v. *Carson* (5 T. L. R.) which will be found as fully commented upon in these pages as its weight and importance justify. As was seen, however, by the decisions in the *Era*, and later in the *Pall Mall Gazette*, cases, the law on the point seems to require some modification, and presses unduly hard on newspapers.

The improvements in procedure and practice effected by the Act of last session merit attention, and must be regarded as necessary, proper, and useful changes. Any legislative attempt to prevent vexatious litigation is a gain to the public, and it seems strange how such admitted defects as are now cured by the salutary provisions respecting the consolidation of actions—the giving in as evidence of proofs of previous verdicts obtained in the same cause, and the wholesome reform brought about by the substitution of a judge's order for the fiat of a public prosecutor obtainable on ex parte application, together with those other useful subsidiary changes made by the late Act—could remain so long encumbering the free and fair course of the law in libel actions. These reforms are so recommendable as to suggest some wonder how the unsatisfactory

condition of affairs they have altered could be permitted so long to continue uncured and unremedied.

The Registration Law was one of the chief purposes of the Act of 1881. It strove to do away with the old cumbrous machinery of proving publication and ownership; but, as I have endeavoured briefly to point out, it falls short of that end and contains two most serious defects. Indeed it is a question if these drawbacks do not render the measure entirely illusory and useless in these respects. Under its provisions any ad interim change in the proprietorship or incidents of the publication of a paper need not be registered, so that a print started any time between the August of every year, when the register is closed practically, to the following July when it is opened, cannot be forced to be registered, and the protection intended to be afforded as against ephemeral publications or mushroom prints does not within that close time exist. Generally the evidence of registration in any case cannot therefore be accepted as the conclusive proof it was intended it should be, and a plaintiff will in case of doubt or dispute be forced back on the old proofs such as they are. This defect can be cured by making compulsory the notification to the registrar of any and every change in the proprietorship or publication of a newspaper *whenever and howsoever such change takes place.* The omission to oblige newspaper companies as such to register *under the Act* cannot but be regarded as a deficiency and a drawback which also requires to be remedied.

I have striven within a short compass to give some account of all the recent important libel actions wherein any important principle was decided or any authorita-

tive declaration of the law delivered. In selecting these test cases, I have endeavoured to give the most truly typical ones dealing with the various phases of this comprehensive subject. Every enunciation of a principle that I have reproduced is in the exact words of the judge who made it, and no statement will be found in this work without the previous warrant of judicial authority.

The law of libel being a case-made law is the outgrowth of public opinion, and every legislative modification attempted has been to cure some admitted grievance, or to formulate the principle of a decision. It is thus the product of the age evolved from the wants of society, and the shape and form it has taken are due to the varying phases of public opinion.

I cannot dismiss the subject without a reference to the valuable help I derived from Mr. Blake-Odgers' excellent work on "Libel and Slander." I have not in any degree trenched upon his province, and in fact most of this book will be found more a supplement to than a substitution of any existing work, as it concerns itself mainly with issues and decisions subsequent even to his latest edition.

The complexity of the subject and the wide-reaching extent of the principles now understood as regulating the law must be my excuse for any defects which may be found in this work; and the fact that it is, up to the date of its publication, the only book yet published dealing with the Act of 1888 exclusively, and largely with previous enactments bearing on the subject of newspaper libel, is perhaps the best plea in justification for what otherwise might seem for me a presumptuous undertaking, and perhaps a work of supererogation in

view of such admitted authorities as Folkard's Starkie and Odgers' "Libel and Slander."

From my brethren of the Bar I confidently claim the indulgence they generously and characteristically extend to well-meaning work whenever they find it. They best understand the difficulties of the task I have undertaken, and can with that knowledge appreciate an honest effort to deal with the question.

My friends and fellow workers of the Press may, I should venture to hope, find this book of some utility. Should they do so to any extent, I shall be abundantly compensated for the labour bestowed upon it.

RICHARD J. KELLY.

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THE LAW OF NEWSPAPER LIBEL.

CHAPTER I.

WHAT IS A LIBEL?—THE SEVERAL KINDS OF LIBEL—REMEDIES—GENERAL REMARKS UPON SOME LEADING CASES, AND UPON MALICE AND PRIVILEGE.

"It has been stated as a great defect that there is no law defining a libel or expounding what shall be considered libellous. In no code, either formed by successive acts of legislation or composed at once by speculative lawgivers, was ever such a definition attempted. The attempt would in truth be vain; the nature of the thing precludes all minute definition." Thus wrote an eminent jurist. Libel therefore has not been statutably defined, and the law as it stands is the growth and outcome of judicial decisions—"the problem ever suggesting itself and calling for solution being to find the quantity of liberty and the species of restraint which will secure to the Press the greatest amount of free discussion consistent with the tranquillity of the community and the safety of private character." Lord Brougham further adds a description I may well adopt:—"According to the principles now recognised, libel consists in publishing a written, printed, or painted composition tending to disturb the public peace by vilifying the Government or other-

wise exciting the subjects to revolt,—which may be termed a public or seditious libel,—or by traducing private character, which is commonly termed a private libel. The former class has mainly an historic interest in these countries, the Government coming to recognise with Cromwell that 'it is not worth preserving if it cannot stand against paper shot.' No just and lawful state seeks to hamper its press, as it trusts to truth and sense to prevail, as they always do."

A libeller, if proceeded against criminally, may be put on his trial by *ex officio* information on motion of the Crown officers, or by indictment at the suit of the injured person. The tendency of recent decisions is to force recourse for redress to be had to an action for damages by civil suit unless in extreme cases, for the theory of a prosecution is that the libel tends to endanger the public peace (per Coleridge, C.J., in *Lonsdale* v. *Yates*, 3 T. L. R. 193). A criminal libel is punishable by fine and imprisonment. Formerly the pillory was imposed, and before the Revolution heavy fines and long imprisonments, but in recent times never more than a year or two, according to the gravity of the offence. can be given (see Seditious Libels, *infra*).

The civil remedy is however what chiefly concerns the public, and this may be sought by the aggrieved party for anything defamatory published about him, whether written, printed, or spoken, within certain limitations. As remarked, there is no exact legal definition of the offence of libel, and its meaning must therefore be found by the jury, in every case according to the circumstances of that case. A jury are the sole and proper arbiters. Still there have been very able expositions of the law from the Bench, and a most explicit and satisfactory one is that of Black-

burn, L.J., in the case of the *Capital & Counties Bank* v. *Henty* (7 App. Cas. 741), who therein clearly describes what is a libel: "It is," says he, "a written statement published without lawful justification or excuse, calculated to convey to those to whom it is published an imputation on the plaintiffs injurious to them in their trade, or holding them up to hatred, contempt, or ridicule. Circumstances point and give effect to the statement, and the manner of publication and the things relative to which the words are published, and which the person publishing knew or ought to have known, would influence those to whom it was published in putting a meaning on the words, are all material in determining whether the writing is calculated to convey a libellous imputation or not."

Parke, B., in *Parmiter* v. *Coupland* (6 M. & W. 105) gave a definition of libel which is often referred to, describing it as "a publication without justification or lawful excuse which is calculated to injure the reputation of another by exposing him to hatred, contempt or ridicule." And in *R.* v. *Holbrook* Cockburn, C.J., stated that "a person libelled may pursue his remedy for damages or prefer an indictment, or by leave of the Crown a criminal information, or he may sue for damages and indict" (14 Cox's C. C.).

It has been held that to constitute the offence the libel must be falsely and maliciously published. The very terms of the averment in an indictment plead such, in these words or others to the like effect, "that the defendant falsely and maliciously published of A. B. a false, malicious, and defamatory libel," and the averment in an ordinary civil action is usually set out thus, "that the defendant falsely and maliciously published of, and concerning the plaintiff, the words, &c." "Malice," which the old jurists called the *animus*

injuriandi, and which constitutes the gist and gravamen of the offence of libel, as will be seen further on, has been the subject of many authoritative definitions. Probably that of Bayley, J., in *Bromage* v. *Prosser* (4 B. & C. 247) is the best known. He describes "malice" as "meaning in common acceptation ill-will against a person, but in its legal sense as a wrongful act done intentionally without just cause or excuse." Every libel is held to be published maliciously unless justified or privileged, and further on will be mentioned the circumstances and conditions which impart to it immunity. Generally it may be said that defamatory matter is privileged when honestly communicated in answer to inquiries, or when affording information to those who have an interest in the information; or when it is made in a court of justice, in Parliament, or in any other privileged place. A newspaper report is absolutely privileged when it is a faithful representation and a substantially correct account of what occurred in a court of justice or at a public meeting held for a lawful purpose, and upon a matter of public interest (sects. 3 and 4, Act 1888). And a comment is privileged when upon a subject the writer has a right as a public citizen to comment upon (see *infra*). It must be remembered that a writer *qua* writer has no greater right or any higher privilege under this head than an ordinary citizen.

To give a complete classification of what is judicially held to constitute a libel amid all the varied circumstances of public life is, needless to say, impossible, but a few characteristic instances will best illustrate it. Thus, a corporation may libel or be libelled (*Metropolitan Omnibus Co.* v. *Hawkins* 28 L. J. Ex. 20, 4 H. & N. 87), or trustees may be libelled, and, if so,

they may bring a joint action (*Booth* v. *Briscoe*, 2 Q. B. D. 496; *Manchester & Sheffield Railway Co.* v. *Brooks*, 2 Ex. Div. 243; *Appleton* v. *Chapelizod Paper Co.*, 45 L. J. Ch. 276), or a religious community may be libelled (*R.* v. *Gathercole*, 2 Lewin's Crown Cases, 237), or even a dead man, if with intent to bring the living into contempt (*R.* v. *Topham*, 4 T. R. 1791; *R.* v. *Ensor*, 3 T. L. R. 367). The words must in their nature be defamatory (*Sheahan* v. *Ahearne* (9 Ir. R. C. L. 45, reviewing a decision in *Kelly* v. *Partington*, 5 B. & Ald. 645). Since Fox's Act (32 Geo. 3, c. 9) the ultimate decision on the point whether the matter complained of is a libel or not is not a matter of law. In *Maitland* v. *Bramwell* (2 F. & F. 623) even the *bona fides* of a defendant was left to the jury, and in *Eastwood* v. *Holmes* (1 F. & F. 347) they were asked to decide if there was express malice. In *Chalmers* v. *Payne* (3 T. R. 428) the judge left it to the jury to decide if the report was injurious to the plaintiff as averred. These are but a few illustrative cases in point out of a long line of decisions from Fox's Act in 1792, when the jury first became the judges of the libel, in fact the censors of the press and guardians of the public liberties. As seen in *R.* v. *Francklin* (17 State Trials, 667) before that time juries had only to decide on the mere fact of publication. As to the intention of a party who commits the offence, the presumption is that he knew and meant to do what he did, and the only defence can be justification or privilege. In *Littledale* v. *Earl of Lonsdale* (2 H. Bl.) it was held that a party was not justified in committing an act injurious to another because he did not intend to do an injury, "for where words are used and no justifiable cause is shown the law rightly presumes the existence of malice." The

existence of a rumour to the same effect as the allegations in the libel is not admissible as a defence, nor is proof of particular acts of misconduct on the part of plaintiff, but general evidence of reputation may probably be given in mitigation of damages (*Scott* v. *Sampson*, 8 Q. B. D. 491).

Starkie, speaking of a criminal libel against an individual, says that "it consists in publishing the defamatory matter set forth on the record in the sense attributed to it by the innuendoes with intention alleged in the indictment, namely to injure, vilify, and prejudice the prosecutor and deprive him of his good name, and to bring him into public contempt, maliciously, without any legal justification or excuse."

Cockburn, C.J., thus describes the courses open to a person who is libelled:—"He may pursue his remedy for damages or prefer an indictment or by leave of the Court a criminal information, or he may both sue for damages and indict (*R.* v. *Holbrook*, 14 Cox's C. C.) For a prosecution under sect. 8 of the Act of 1888 (as repealing sect. 3 of the Act of 1881) there is now required the order of a judge in Chambers obtainable only on notice to the other side. It is usual to select the proprietor or publisher of the newspaper in these actions, as he is recognised and known, and his name is found registered as such in the Register of Newspapers, and a copy of this entry produced in court is receivable as evidence of such publication or ownership. An aggrieved person may, however, prefer to deal with the actual libeller, and leave the innocent publisher alone. If so, he can proceed against the writer if known, but if the communication is anonymous, and he demands the author's name through his solicitor, he has no power of compelling a disclosure, and it has been held that a publisher or proprietor

cannot be compelled to disclose the name of a correspondent, nor even to produce the original manuscript for the purpose of the identification of the handwriting, at least not before the delivery of the statement of claim (*Harte* v. *Catherall and Others*, 14 L. T. R. 802). See *Lefroy* v. *Burnside* (Ir. R. 4 C. L. 340); *British and Foreign Contract Co.* v. *Wright* (32 W. R. 4137); and *Hennessy* v. *Wright* (36 W. R. 879).

With regard to a criminal libel before the 6 & 7 Vict. (Lord Campbell's Act), it was not competent for a defendant to plead the truth of the defamatory statement, and all the jury could find was the mere fact of publication. Indeed, so ingrained was that principle in the law that it passed into a popular proverb, very much misunderstood in regard to its application, that "the greater the truth the greater the libel." Now by the 6th sec. of that Act the truth of the libel can be pleaded in answer to an indictment (*R.* v. *Newman*, 1 E. & B. 573) and the defendant may further plead and prove that it was for the public benefit that the said matter should be published. Evidence of these facts can then be given.

The fourth and fifth sections shew that the punishment is to vary according to the truth or falsehood of the libel, and sect. 7 enables a defendant to "plead the act of another person in justification and that the publication was made without his authority, consent or knowledge, and that it did not arise from want of due care or caution on his part." By sect. 8 the defendant, if acquitted on a prosecution at the suit of a prosecutor will be entitled to recover from him his costs.

A criminal information will be granted in the Queen's Bench Division where the libel is of a serious character, and is declared on oath to be false (Cole on "Criminal Information," 19) and the applicant is

understood to waive his right to bring any subsequent or other action, whether his application is granted or refused, unless the Court otherwise direct.

As regards the interpretation of the meaning of libellous words, the Court will not construe them in a better sense than they ordinarily bear, but it will see if there is anything which by reasonable intendment conveys a defamatory imputation (*Mawe* v. *Pigott*, Ir. R. 4 C. L. 54), which imputation must tend to bring the party into hatred, contempt, or ridicule (*ibid.*, and *Woodard* v. *Dowsing*, 2 M. & R. 74; *Clement* v. *Chois*, 9 B. & C. 172). Even if a man previously told a ridiculous story about himself, he can take an action for its repetition or publication under other circumstances (*Cook* v. *Ward*, 6 Bing. 409). If the words are libellous in their ordinary acceptation and without aid of intrinsic circumstances are reasonably understood as defamatory, judgment cannot be arrested (*Wakely* v. *Healy*, 7 C. B. 591), nor where the words are general, and the jury applies the innuendoes to plaintiff (see cap. 11).

Words not defamatory in their nature are not actionable unless special damage result (*Sheahan* v. *Ahearne*, 9 Ir. R. C. L. 42); (*Miller* v. *David*, L. R. 9 C. P. 118). Every untrue statement is actionable if followed by injurious results (*Archibald* v. *Sweet*, 5 C. & P.). It is no defence to say that one heard the story from another (*De Crespigny* v. *Wellesley*, 5 Bing.); nor that it was published by another (*Tedman* v. *Ainslie*, 10 Ex. 63); but it may be a matter in mitigation if the name is given up (*Bennett* v. *Bennett*, 6 C. & P. 586), and in slander to mention the name of the informant may be pleaded in justification (*Davis* v. *Lewis*, 7 T. R. 17). Where a person originates a slander and afterwards repeats it before a third party at the invitation of the

party slandered that authority is no protection (*Griffiths* v. *Lewis*, 7 Q. B. 61). Where the plaintiff has two trades, and the slander is spoken or written concerning one of them he can recover on proof that he was of the trade referred to (*Figgins* v. *Cogswell*, 3 M. & S. 369). To charge an attorney with sharp practice (*Beydell* v. *Jones*, 4 M. & W. 446); a clergyman with passion (*Walker* v. *Brogden*, 19 C. B. N. S. 65) or with unseemly conduct in church (*Kelly* v. *Tinling*, L. R. 1 Q. B. 699); or that he was obliged to perform penance (*ibid.*); or with dishonesty (*Pemberton* v. *Colls*, 10 Q. B. 461); or with incontinence if a beneficed clergyman (*Gallwey* v. *Marshall*, 9 Ex. 295); or a doctor with immorality (*Ayre* v. *Craven*, 4 N. & M. 220), or with non-qualification (*Collins* v. *Carnegie*, 3 N. & M. 703), or with unskilfulness (*Long* v. *Clubb*, 5 C. & P. 55); an owner of race-horses, that he pulls them (*Greville* v. *Chapman*, D. & M. 533); or a bookseller with selling immoral books (*Tabart* v. *Tipper*, 1 Camp. 358) are all actionable without proof of special damage if spoken, and in any event if written, the guiding and determining principle (2 Starkie N. P. Rep. 245–297; 4 Esp. 191; 3 Bos. & P. 372; 3 Bing. 184) running through and regulating all these decisions being that if spoken of a person in connection with his trade, calling, or occupation, and as such are defamatory, they are libellous (5 B. & C. 50; 1 C. & J. 143; 2 Ad. & Ell. 2; 5 M. & W. 249). One cannot, however, libel a man engaged in an illegal occupation for any remarks on such (*Hunt* v. *Bell*, 1 Bing. 1, *Yrisari* v. *Clement*, 3 Bing. 42). Words spoken in drunkenness are not excusable, nor is such a protection in libel (*Kendrick* v. *Hopkins*, Carey, 93). To charge evil inclinations, ingratitude or evil principles is libellous (*Prince* v. *Howe*, 1 Bro. P. C. 64). It is no excuse to

plead ignorance of the contents of libel, but it may be put in mitigation that the name of the original slanderer was given up (Anon. 2 Atk.).

Costs in all cases follow result of an action, with the exception in cases of libel, that in actions where the jury do not award more than forty shillings damages, the plaintiff shall not be entitled to more costs than damages. In an action for slander where some of the counts were for actionable words and others were not so, but special damage was laid for all, and the plaintiff had a verdict for 40*s.* on all counts, he was held entitled to full costs (*Saville* v. *Jardine*, 2 H. Bl. 531). See remarks on verdict, for nominal damages, *infra*.

It may be possible to libel a dead man, and the principles which determine that offence are plain. In *R.* v. *Ensor* (3 T. L. R. 367) it was decided that a libel upon a dead person was not a criminal offence unless it can be clearly proved to have caused injury or annoyance to the living (*R.* v. *Topham*, 4 T. R. 127). In *R.* v. *Labouchere* (L. R. 12 Q. B. D. 320) an *ex officio* information was refused because the person libelled was dead. Coke (5 Reports, 125) thus wrote of the offence: "Although the private man or magistrate be dead at the time of the making of the libel, yet it is punishable; for in the one case it stirs up others of the same family, blood, and society to revenge and break the peace; in the other the libeller slanders and traduces the State, which dies not." But in *R.* v. *Topham* (4 East, 126) Lord Kenyon delivering judgment, it being a case of libelling Lord Cowper, deceased, said: "Now, to say in general that the conduct of a dead person can at no time be canvassed, to hold that even after ages are passed the conduct of bad men cannot be contrasted with

the good, would be to exclude the most useful part of history, and therefore it must be allowed that such publications may be made fairly and honestly. But let this be done whenever it may, whether soon or late after the death of the party, if it be done with a malevolent purpose to vilify the memory of the deceased, and with a view to injure his posterity, as in *R.* v. *Critchley*, it then comes within the rule stated by Hawkins, "that it is done with a design to break the peace, and then it becomes illegal." Mr. Justice Stephen held in above cited case of *R.* v. *Ensor* that "the vilifying of the dead must be with a view to injuring posterity. The dead have no rights and can suffer no wrongs. The living alone can be subjects of legal protection, and the law of libel is intended to protect them, not against every writing, but against writings holding them up individually to hatred, contempt or ridicule." In *R.* v. *Topham* (*supra*) there was an arrest of judgment, as no intention to injure the family of the living was alleged, and that was a necessary averment in such an indictment.

CHAPTER II.

SLANDER AS DISTINGUISHED FROM LIBEL.

UNDER the general head of defamation, slander and libel are included, with the main distinguishing mark that the former is spoken, the latter written. In both cases the words must be malicious (*Watkin* v. *Hall*, L. R. 3 Q. B. 396; *Macpherson* v. *Daniels*, 10 B. & C. 272; *Emsley* v. *Plimsoll*, L. R. 8 C. P.; *Leyman* v. *Latimer and Others*, 3 Ex. Div. 15); disparaging (*Sheaham* v. *Ahearne*, 9 Ir. R. C. L. 412; *Mawe* v. *Pigott*, 4 Ir. R. C. L. 54, C. P.; *Digby* v. *Thompson*, 4 B. & A. 821); tending to degrade a man or expose him to contempt, or prejudice his character or credit (*Gray* v. *Gray*, 34 L. J. C. P. 45); or causing a person to be shunned (*I'Anson* v. *Stuart*, 1 T. R. 748; *Walker* v. *Brogden*, 19 C. B. N. S. 165). In oral defamation, except in the excepted cases, damages must be proved (*Lynch* v. *Knight*, 9 H. L. C. 517; *Vicars* v. *Wilcocks*, 2 Sm. L. C. 534; *Green* v. *Britton*, 2 C. M. & R. 171; *Lumley* v. *Gye*, 2 E. & B. 216). As to what constitutes actual damage (*Roberts* & *Roberts*, 33 L. J. Q. B. 249; *Allsopp* v. *Allsopp*, 5 H. & N. 534; *Davies* v. *Solomon*, L. R. 7 Q. B. 112. *Riding* v. *Smith*, L. R. 1 Ex. Div. 91) are cases where immoral imputations were held damaging. As in libel, the mere repeater of defamatory statements is responsible (*Parkins* v. *Scott*, 1 H. & C. 153. *Watkin* v. *Hall*, L. R. 3 Q. B.; *Macpherson* v. *Daniels*, 10 B. & C. 263) except the originator authorised their repetition (*Kendillon* v. *Maltby*, Car. & M. 402), or they were in discharge of a

moral duty (*Derry* v. *Handley*, 16 L. T. N. S., Q. B. 263; *Ward* v. *Weeks*, 4 M. & S. 808).

Archbold says (Crim. Cases, 801):—"Wherever an action will lie for verbal slander without laying special damage, an indictment will lie for the same words if reduced to writing and published; but the converse will not hold good, for an action or indictment may be maintained for words written, for which an action could not be maintained if they were merely spoken" (*Thorley* v. *Lord Kelly*, 4 Taunt. 355).

The distinction between slander and libel is pretty clearly defined. By slander or spoken defamation the law recognises anything in itself defamatory, followed by damages, or which charges a person with an indictable offence, or which is said of him in connection with his calling, or which imputes to him a contagious disease excluding him from social intercourse. If grossly vituperative words be spoken, provided they keep clear of these four classes of criminality, they are not actionable. A person may be called many opprobrious names (*Levison* v. *Stuart*, 17 R. 748; *Bell* v. *Stone*, 1 Bos. & P. 331: 2 H. Bl. 221), abused with all the details, and there is no remedy by action; yet if one is called a libeller, or the slightest indictable offence is imputed to him, he has his remedy. However, if the least charge of any sort is written and shewn to a third party, he has his redress. Seditious, blasphemous, or grossly immoral words may be prosecuted criminally, though not reduced to writing and in fine, that which it would be a libel to write against the Government it is sedition to speak.

The distinctive difference maintained between libel and slander will be found very intelligibly illustrated in the following leading cases and authorities (*Villiers* v. *Mousley*, 2 Wils. 405; 5 Co. 120; *Saville* v. *Jardine*,

2 H. B. 532; Bac. Abr. Slander B.; *l'Anson* v. *Stuart*, 1 T. R. 748; Bl. Co. by Christian, 125).

The dividing line runs very far back in the law, as the remarkable cases of *Stanhope* v. *Bligh* (4 Rep. 15) (where accusing a man of forswearing was not, but of perjury was actionable) *Hext* v. *Yeomans* (*ibid.*), *Brickley's case* (*ibid.*), *Eaton* v. *Allen* (*ibid.*), *Benham's case*, &c., and *Bannister's case*, (25 Eliz.), where calling a man a bastard was actionable, as likely to lead to disherison; *Milton's case* (1 Roll. 6159), and *Gerard's case* (4 Rep. 8), where saying a man had got a lease of certain lands of which another was going to give a lease was actionable, because such was then an indictable offence. The fiction seems wrong, for a man's character should have the same protection from oral as from written slander. "Indeed," says Best, J., in *De Crespigny* v. *Wellesley* (5 Bing. 406), "no property is more valuable than a man's reputation. If we reflect on the degree of suffering occasioned by loss of character and compare it with that occasioned by loss of property, the amount of the former injury far exceeds that of the latter." Another mark of differentiation between the two offences is that there can be no criminal prosecution for words spoken, unless they are seditious, blasphemous, grossly immoral, uttered of a magistrate in discharge of his duty, or are a challenge to fight, and that in fine there is no remedy for oral defamation (Archbold), but a civil action for damages. As the two offences are so identified in their general principles, they must be generally considered together with the necessary distinction as regards the writing or the speaking. There may be a libel other than a mere printing or writing—a chalk mark on a wall may be so (*Mortimer* v. *McCallam*, 6 M. & W. 58), or burning a man's effigy (*Eyre* v. *Garlick*, 42 J. P. 68), or a caricature. A libel is in fine anything published,

whether on parchment, paper, stone, wood, slate, or other durable material, whether written, penned, pencilled, painted, cut, or otherwise represented. The varied niceties of meaning between the two offences can be best understood by their contrast, and in all the examples given by all books the instances of the two are generally given together, as very often the difference is artificial.

By the Indian Code the offence of defamation is well understood and defined with a precision and accuracy worthy of our imitation. By it "whoever by words, either spoken or intended to be read, or by signs or by visible representations makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in cases hereinafter excepted, to defame that person." And, further on, "No imputation is said to harm a person's reputation unless that imputation, directly or indirectly in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or calling, or lowers the credit of that person or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful." The punishment may be two years' imprisonment, and the exceptions are given under head of "Public Comment" (see *infra*).

"At common law any one who reports or repeats defamatory words is as liable to proceedings for libel or slander as the man who invented the falsehood and set it in circulation," for by repeating the tale a person is practically endorsing it, and it is often the repetition of the slander that does most injury. And it makes no difference to say "you are informed of the matter" or

"have it on authority." This is a usual excuse given in society newspapers, and by the propagators of social slander, but it is an illusory protection, and the only case where the mention of the informant or authority is available in justification is in mitigation of damages in slander actions.

The remarks of Coleridge, C.J., in *R.* v. *The World Newspaper* (13 Cox's C. C. 307) may aptly be quoted in this connection: — "A man who chooses to pick up every malignant bit of scandal which floats upon the surface of the scandal-loving part of society is responsible for it. It may be done without any desire to injure any one in particular, that is, without a desire to injure one more than another, but if he chooses to minister to the morbid taste of a certain portion of the public for scandal and slander, it is not enough to say that he hates no one in particular and has no design to injure anyone more than another. The purpose is to pick up anything by which to assail personal character merely because it is the taste of a certain portion of society."

An action may often be maintainable for words when written which might not lie if they were spoken (*Thorley* v. *Lord Kerry*, 4 Taunt. 385; *Leicester* v. *Walter*, 3 Camp., *De Crespigny* v. *Wellesley*, *supra*; *Cook* v. *Ward*, 6 B.). Where writings are actionable and libellous see *Digby* v. *Thompson* (4 B. & Ad. 821), *Fray* v. *Fray* (34 L. J. Ch. 45), *Haire* v. *Wilson* (9 B. & C. 646).

As regards the privilege extended to and the protection afforded certain slanderous communications, the same principle rules as in libellous communications. All statements *bonâ fide* made in the performance of a duty, or with a fair reasonable purpose of protecting the interests of the person making them, or to whom

they are made, are protected (*Somerville* v. *Hawkins*, 10 C. B. 63).

Save these broad distinctions in the actions the principles are the same in libel and slander, and will be best understood when the two are considered together.

Calling a man a villain in a letter to a third party was held actionable, while it was not so if spoken (*Bell* v. *Stone*, 1 B. & P. 331). It is not so to call a person a gambler unless illegal gaming is meant (*Forbes* v. *King*, 2 L. J. Ex. 109); or a blackleg, without special damage (*Barnett* v. *Allen*, 3 H. & N. 370); or "a welcher" (*Blackman* v. *Bryant*, 27 L. T. 491); or a swindler, unless in reference to his trade (*Black* v. *Hunt*, 2 Ir. L. R. 10), but it is to call one a "convicted felon" (*Leyman* v. *Latimer*, 3 Ex. D. 352). A charge of immoral conduct, though not punishable by law, is actionable (*Archbishop of Tuam* v. *Robeson*, 5 Bing. 17). Here the prelate was charged with trying to procure the perversion, by preferment, of the Rev. Tom Maguire (a famous Irish Catholic priest), by the *Morning Post*. Best, C.J., in this case said that to support an oral slander something criminal must be imputed, but in a libel any tendency to bring a party into contempt or ridicule is actionable. Imputing unchastity to a woman without special damage is not actionable (*Robertson* v. *Powell*, 2 Selw. N. P. 1224; *Roberts* v. *Roberts*, 5 B. & S. 384). These typical cases, and others referred to incidentally, must suffice to illustrate the general principles guiding decisions as to what constitutes the offence of slander.

A distinction to be observed, however, between libel and slander is that in libel damage is always implied by law, whereas all descriptions of slander are actionable, with the exceptions mentioned, only on proof of special damage. In the averment the special

damage should be stated with sufficient particularity; thus, where it is alleged that the defendant falsely and maliciously spoke and published of the plaintiff the words following, that is to say (mentioning the particular words) the special damage should then be averred "whereby plaintiff lost his situation" as the case may be, &c. Where this need not be averred it is necessary to prove that (1) the plaintiff was charged with an offence punishable by law; or (2) that he suffered from some contagious disease or disorder excluding him from society; or (3) that the words were spoken in connection with his trade, office, calling, profession or avocation (*Huckle* v. *Reynolds*, 7 C. B. N. S. 114; *Heming* v. *Power*, 10 M. & W. 564; *Edsall* v. *Russell*, 4 M. & Gr. 1090; *Curtis* v. *Curtis*, 10 Bing. 447; *Slowman* v. *Dutton*, *ib.* 402; *Tozier* v. *Mashford*, 6 Ex. 539; *Wadsworth* v. *Bentley*, 23 L. J. Q. B. 3; *Helsham* v. *Blackwood*, 11 C. B. 111; *Bloodworthy* v. *Gray*, 7 M. & Gr. 334); all these refer to the first and second class. As to slander in connection with a man's calling (3) (*Southee* v. *Denny*, 1 M. 196; *Barnett* v. *Allen*, 3 H. & N. 376; *Homer* v. *Taunton*, 29 L. J. Ex. 318; *Brown* v. *Smith*, 13 C. B. 596; *Rolin* v. *Steward*, 14 C. B. 603; *Bellamy* v. *Burch*, 16 M. & W. 590; *Griffiths* v. *Lewis*, 7 Q. B. 61; *Robinson* v. *Marchant*, 7 Q. B. 918; *Gallwey* v. *Marshall*, 9 Ex. 294; *Willy* v. *Elston*, 8 C. B. 142; *Dixon* v. *Smith*, 29 L. J. Ex. 125; *Evans* v. *Harris*, 1 H. & N. 251; *Evans* v. *Harlow*, 5 Q. B. 624; *Ingram* v. *Lawson*, 5 Bing. N. C. 66; *Allsopp* v. *Allsopp*, 29 L. J. Ex. 315; *Tunnicliffe* v. *Moss*, 3 Car. & K. 83; *James* v. *Brook*, 16 L. J. Q. B. 17). These last-mentioned cases refer to slanderous words spoken of tradesmen, clergymen, &c., and where special damage naturally flows from the slander. Where words are spoken or written depreciating the value of

property and special damage ensues, they are also the subject of an action.

In *Lemon* v. *Simmons* (57 L. J. Q. B. 260) a curious point arose. The plaintiff was accused of robbing his own wife, and the question was if that charge were actionable. It was admitted that, if the parties were living apart since the Married Women's Property Act, such could take place, or if the husband took the money when about to leave or desert. The defence really was that the words did not therefore impute an indictable offence, and the jury found for plaintiff. Huddleston, B., on a motion for a new trial held for those reasons that the words were not actionable (4 T. L. R. 306). In *Wenman* v. *Ash* (13 C. B. 836), Maule, J., held that for the purpose of having the honour and feelings of a husband assailed and injured by acts done or communications made the old doctrine of man and wife being considered one did not hold, and that they were separate entities. In *Wennhak* v. *Morgan and Wife* (20 Q. B. D. 635), in an action for libel, the fact that the defendant disclosed the libel to his wife was held not to be evidence of publication, and in this case it was further ruled that maliciously defacing the written character of a servant by writing upon it disparaging statements is a case where plaintiff may recover substantial damages. *Trumbull* v. *Gibbon* (3 City Hall Recorder, 97) (an American case) was referred to by Huddleston, B., in *Lemon* v. *Simmons*. There the delivery of a libel to the wife was held not to be a publication. In *Chamberlain* v. *Boyd* (11 Q. B. D. 407) certain defamatory but not slanderous allegations were made by the defendant, in consequence of which it was stated that plaintiff was rejected from the club to which he sought membership, but there the Court held that the statement of claim did not show sufficient grounds for an

action, for the "words complained of were not actionable in themselves and disclosed no cause of action, and must be supported by special damage, and the damage sustained was not pecuniary, was incapable of being measured in money, and was not the natural and probable consequence of the words." As before explained, words imputing a criminal offence are actionable without special damage, and it is not necessary to allege in the statement of claim that they impute an indictable offence (*Webb* v. *Beavan*, 11 Q. B. D. 609). In *Vicars* v. *Willcox* (2 S. L. C. 563) it was ruled that the words for which an action is maintainable must have in common sense and reason some connection with the damage said to have ensued from them, and it is not enough that the unwarrantable caprice of some person has caused a damage to result from them which the speaker had no reason to apprehend. In *Lynch* v. *Knight* (9 H. L. C.) an important principle was ruled. There the action was not maintainable, because the loss or special damage relied upon was not "the natural and probable consequence of the injury complained of," that is, the speaking of the slanderous words. Yet in the case of the *Société Française des Asphaltes* v. *Farrell* (1 C. E. 563) the wrongful refusal of a third party to fulfil a contract was held to give a right to special damage for slander if such refusal were the probable consequence of the utterance of the words. Where a woman living apart from her husband brought an action for slander for words not actionable *per se*, and pleaded as special damage the loss of friends, credit and reputation, annoyance and an irreparable breach between herself and her husband, the deprivation of income and of a home, the Court of Appeal held that these results were not matters of special damage to give a cause of action (*Weldon* v. *De Bathe*, 54 L. J.

Q. B. 113; 33 W. R. 328). As a matter of practice, the case may be mentioned where particulars were required to be given of the persons who may have heard the slanderous words in a public room; and where an order was made that the plaintiff must supply the "best particulars he can give of those present on the occasion" (*Williams* v. *Ramsdale*, 36 W. R. 125). Order XIX. r. 4, deals with this matter of pleading (*Rosselle* v. *Buchanan*, 16 Q. B. D. 537). As to a discovery of particulars in libel actions *Gouraud* v. *Fitzgerald* (37 W. R. 55), and *Hennessy* v. *Wright* may be profitably consulted.

The Supreme Court of the United States in a most important judgment in the case of *Pollard* v. *Lyons* (3 *Central Law Journal*, 107) defined the law as affecting slander, and which cases of oral slander are to be held actionable. The Suprme Court held, and all English decisions justify and agree in holding the following cases of slanderous utterance to be actionable:—

Firstly—Words falsely spoken of a person which impute to the party the commission of some criminal offence involving moral turpitude for which the party if the charge be tried may be indicted. (This was presumably framed in accord with the decision in *Odger* v. *Turner*, 6 Mod. 104).

Secondly—Words falsely spoken of a party which impute that the party is infected with some contagious disease, whereof the charge, if true, would exclude the party from society.

Thirdly—Defamatory words falsely spoken of a person which impute to the party unfitness to perform the duties of an office or employment of profit, or want of integrity in the discharge of the duties of such office or employment.

Fourthly—Defamatory words falsely spoken of a party, which prejudice such party in his or her profession or trade.

Fifthly—Defamatory words falsely spoken of a person, which, though not in themselves actionable, may occasion special damage (*Clement* v. *Chois*, 9 B. & C. 174).

Defamatory statements made on a privileged occasion in the honest belief that they are true are protected whether such belief be reasonable or not. It was even held in the case of *Clark* v. *Molyneux* (10 Cox's C. C. 14) by the Court of Appeal that the burden of proof was on plaintiff, and that the reasonableness or not of the belief was immaterial.

As a matter of practice it may be here added that great care is necessary to prove all that is set out in the pleadings. Thus where defendant was alleged to have spoken words of a person as treasurer and collector of a society he was held bound to prove that he was such treasurer and collector. Slanderous denunciations from the pulpit carrying with them loss of custom, situation or employment, are actionable if the truth of the statements cannot be proved (*Galpin* v. *Fowler*, 9 Ex. 615; *Barnabas* v. *Traunter*, 1 Vin. Abr. 396). In *Bloodworthy* v. *Gray* (7 M. & Gr. 334) a contagious disease was attributed to a man and held actionable. Charges against a person in an office of trust as well as of emolument are offences, and if special damage result from the utterance of the slanderous words redress will lie (*Payne* v. *Beaumorris*, 1 Lev. 218; *Davies* v. *Solomon*, L. R. 7 Q. B. 112).

Seditious Slander. It has been decided in *R.* v. *Burns* (16 Cox's C. C. 355, per Cave, J.) that an intention to excite ill will between different classes of Her

Majesty's subjects may be a seditious intention. Whether or not it is so in any particular case must be decided by the jury after taking into consideration all the circumstances of the case. "Sedition embraces everything, whether by word, deed, or writing, which is calculated to disturb the tranquillity of the State and lead ignorant persons to subvert the Government and laws of the empire." Where in a prosecution for uttering seditious words with an intent to incite a riot it is proved that previously to the happening of a riot seditious words were spoken, it is for the jury to decide whether such rioting directly or indirectly was attributable to the seditious words proved to have been spoken. A meeting lawfully convened may become an unlawful meeting if during its course seditious words are spoken of such a nature as to produce a breach of the peace. And those who do anything to assist the speakers in producing upon the audience the natural effect of the words will be guilty of uttering seditious words as well as those who spoke the words. Seditious libels as contradistinguished from seditious slander, are publications tending to disturb the public peace by vilifying the Government or otherwise inciting the subjects to revolt or discontent.

Slander of Title. A kind of slander which has to be noticed here is one peculiar to realty, and includes anything said likely to affect the title of a person in some estate. This is only actionable when it is false and malicious, and these elements of criminality must be conclusively shown (*Pater* v. *Baker*, 3 C. B. 831; *Brook* v. *Rawl*, 4 Ex. 421; *Rogers* v. *MacNamarra*, 14 C. B. 27, 2 Selw. N. P.; *Bignell* v. *Bussard*, 3 H. & N. 217, where Channel, B., held that "in slander a plaintiff may rely on proof of special damage). In libel special

damage has no existence as a ground of action. This is an intermediate case—it is not slander of title, but there may be a case of libel of title (*Carr* v. *Duckett*, 29 L. J. Ex. 468).

In *Hatchard* v. *Metge and others* (3 T. L. R. 118) the question at issue was the use of the word "Delmonico" as a brand for wine. Manisty J., left it to the jury, whether the publication of such a word was a libel not on the person who was dead, but on his business continued by plaintiff. "In law a publication injurious to a man's trade or character was a libel." If it was a libel (he asked the jury), was it maliciously published, the law presuming that what was calculated to injure a man's business was *primâ facie* malicious, and it was for defendant to call evidence to rebut the presumption. Absence of actual malice in fact was not sufficient. The jury found for plaintiff. Odgers in Libel and Slander, p. 137, thus describes the offence in the following passage, quoted with merited approval by Day, J., in *Hatchard* v. *Metge* (*supra* and 18 Q. B. D. 771): "But wholly apart from these cases there is a branch of the law generally known by the inappropriate but convenient name, slander of title, which permits an action to be brought against any one who maliciously decries the plaintiff's goods or some thing belonging to him, and thereby produces special damage to the plaintiff. This is obviously no part of the law of defamation, for the plaintiff's reputation remains uninjured. It is really an action on the case for maliciously acting in such a way as to inflict loss upon the plaintiff. All the preceding rules dispensing with proofs of malice and special damage are therefore inapplicable to cases of this kind. Here, as in all other actions on the case, there must be *et damnum et injuria*. The *injuria* consists in the unlawful words maliciously

spoken, and the *damnum* is the consequent money loss to the public." This very clearly explains the principle, although since the remote statute of Edw. 3, the consistent course of practice in the Courts establishes the principle that a civil action dies with the death of the person libelled, while an injury to a trade does not affect the question of survivorship. In *Wotherspoon* v. *Currie* (L. R. 5 H. L. 508) it was ruled that in order to entitle a manufacturer to an injunction to protect his trade mark it was not necessary to shew any wrongful intention on part of the person against whom the injunction was brought, and in *Twycross* v. *Grant* (4 C. P. D. 40) it was held that, wherever a breach of contract or a tort had been committed in the lifetime of the testator, his executor is entitled to maintain an action if it is shewn upon the face of proceedings that an injury had accrued to the personal estate. "A claim in respect of a libel in the way of his trade does not survive, but, assuming the statement is calculated to bring a plaintiff's trade mark into disrepute so as to damage his property, the executor may succeed in establishing a cause of action in respect of which he can recover."

CHAPTER III.

THE LEGAL MEANING OF LIBELLOUS WORDS.

BEYOND what has been said it may be added that the meaning attachable to libellous words is their ordinary popular signification as understood by those who read them or to whom they are addressed. This is a well-recognised principle. There can be no fanciful meanings, no strained interpretations, and in determining this the jury exercises its most important function. Thus, where initial letters were only used (2 Atk. 469), or asterisks were employed to point out a man, it was held no defence that he was not properly described if those who read the paper knew who was meant (*Bourke* v. *Warren*, 2 C. & P. 37). No libel will lie unless the ordinary reader understands the words in a defamatory sense (*Mulligan* v. *Cole*, L. R. 10 Q. B. 549). Sometimes words may be defamatory in a secondary sense; but where words are not slanderous in their primary sense, but are so in their secondary sense, there must be evidence of facts making them so (*Ruel* v. *Tatnell*, 43 L. T. 507). It is not what the libeller means in his own mind, but what meaning the words convey, that has to be considered (*Read* v. *Ambridge*, 6 C. & P. 308); whether the words taken as a whole are actionable is the true test (*Shipley* v. *Todhunter*, 7 C. & S. 680). Express malice is only inquired into when the occasion is justified (*Hooper* v. *Truscott*, 2 Scott, 672). Of course, a repetition of a defamatory statement is actionable (*Watkin* v. *Hall*,

L. R. 3 Q. B. 396), and it is no justification that the rumour existed (*ibid.*). Where the intermediate utterer of a slander is privileged owing to the relations existing or for other cause, the original utterer is liable (*Derry* v. *Handley*, 16 L. T. 263); not unless the original statement was defamatory (*Parkins* v. *Scott*, 1 H. & C. 153). Words conveying mere suspicion are not actionable (*Simmonds* v. *Mitchell*, 6 App. Cases, 156); nor words imputing crime unless it is a crime liable to punishment (*Holt* v. *Scholefield*, 6 T. R. 691), and all slanderous words must be understood by the Court in the sense the rest of the world ordinarily understands them (*Woolnoth* v. *Meadows*, 5 East, 463). If the words impute a crime they are actionable, though they may not describe it in technical but in popular terms (*Colman* v. *Godwin*, 3 Doug. 90); they are not actionable if they charge a mere breach of trust (*Thompson* v. *Bernard*, 1 Camp. 48), or of contract (*Christie* v. *Cowell*, Peake 4); where charging a transportable act they are of course libellous (*Curtis* v. *Curtis*, 4 M. & S. 337); or where calling a man a returned convict, even not imputing further sentence (*Fowler* v. *Dowdney*, 2 M. & Rob. 119). Words are actionable according to the sense they are understood by those to whom they are addressed (*Hankinson* v. *Bilby*, 16 M. & W. 442; *Daines* v. *Hartley*, 3 Ex. 200). Saying a man is guilty after verdict of acquittal is actionable (*Peake* v. *Oldham*, Cowp. 275; *Ford* v. *Primrose*, 5 D. & R. 287); or charging theft or robbery (*Penfold* v. *Westcote*, 3 B. & P. N. R. 338; *Beavor* v. *Hides*, 2 Wils. 30; *Hankisson* v. *Bilby*, 2 C. & S. 440; *Slowman* v. *Dutton*, 10 Bing. 402); where the charge is clear and specific (*Tomlinson* v. *Brittlebank*, 4 B. & Ad. 630).

All depends upon whether mere abusive words are used or a felony is charged (*Sibley* v. *Tomlins*, 4 Tyr. 90).

The malice, circumstances, and occasion of speaking are all matters for the jury (*Padmore* v. *Laurence*, 3 P. & D. 209; *Kelly* v. *Partington*, 2 N. & M. 460). In *Duke of Brunswick* v. *Harmar* (12 Q. B. 185) Campbell, C.J., held that a witness could not be asked what he understood by a word, that this was for the jury to determine.

The principle guiding the law was clearly laid down in the Irish Court of Appeal in the case of *Clanricarde and Joyce*, where it was held that the true test of the libel was the meaning attached to it by those to whom it was addressed. In that case the Court of Appeal (Dec. 21st, 1888) unanimously set aside the verdict for plaintiff in the Exchequer Court. The Master of the Rolls in his judgment said that the principle of the law was that "the words should be not only defamatory but must be understood as such by those to whom they were published. It had been stated by an eminent judge that "the slander and damage must consist in the apprehension of the hearers. This was a short but weighty statement of the law. As to the publication there was the clearest proof of it. In his opinion the plaintiff had failed to prove that the letter to the *Times* had come to the knowledge of any person to whose mind it would have presented a defamatory sense, different from its ordinary innocent meaning" (*Law Times*, Dec. 1888).

If libellous words point to and refer to no person in particular it becomes a question of evidence if and how far the plaintiff was pointed at, and it is for the jury to decide if he were really meant at all (*Merryweather* v. *Turner*, 19 L. J. C. P. 10; *O'Donnell* v. *Walter*, see *infra*). Where, for instance, a class is referred to and libelled, it must be left to jury to determine if an individual as such is separately referred to and dis-

tinguished (*Le Fanu* v. *Malcomson*, 1 H. L. C. 637). It must always appear conclusively to the Court that the words in the declaration are clearly capable of bearing the defamatory meaning assigned to them, and if so it is for jury to say how far they affect the person seeking redress (*Solomon* v. *Lawson*, 8 Q. B. 826; *Hemings* v. *Gasson* and *Homer* v. *Taunton*, 5 H. & N. 663). Where words are susceptible of a harmless meaning it is incumbent on plaintiff to shew their harmful sense (*Broome* v. *Gosden*, 1 C. P. 728; *Williams* v. *Gardiner*, 1 M. & W. 246). An insensible, strained and repugnant meaning attributed to words may be rejected as surplusage, and all words and meanings not manifestly libellous (*Harvey* v. *French*, 1 Cr. & M. 11; *Roberts* v. *Cambden*, 9 East, 92). Where the meaning is double or equivocal its application to plaintiff must be shewn (*Williams* v. *Stott*, 1 C. & M. 675; *Smith* v. *Carey*, 3 Camp. 461; *Vellers* v. *Till*, 4 B. & C. 655; *Wakeley* v. *Healey*, 7 C. B. 605; *Baboneau* v. *Farrell*, 15 C. B. 360; *Greville* v. *Chapman*, 5 Q. B. 731, in all of which cases the juries were the sole judges of the meaning of the words). In *Hoare* v. *Silverlock* (12 Q. B. 624) it was held that where the meaning is at all doubtful or obscure the words are not actionable. As regards the context of an article or in slander the whole conversation, it has been held that the jury must consider the whole matter and not disjointed, disconnected parts without the qualifying or restrictive portions of the article or conversation which either followed or preceded, and which might not improbably alter the whole signification of the excerpted passages (*Shipley* v. *Todhunter*, 7 C. & P. 680). In *Kelly* v. *Partington* (5 B. & Ad. 651) Patterson, J., held that words were not actionable unless in their nature defamatory, and it did not follow that because a servant was dismissed by his master that such was

the resultant damage of the communication made. "To make the speaking of words wrongful they must be in their nature defamatory." Addison speaking on the matter in his admirable book on Torts, says (p. 823), "The ordinary popular sense of the writing, language, or words is to be taken to be the meaning the printer, publisher or speaker had, but a foundation may be laid for shewing another and a different meaning. Something may have previously passed which gives a peculiar character or meaning to some expression, and some word which popularly or ordinarily is used in one sense may from something that has gone before have a meaning different from its usual one. When, therefore, it is wished to get rid of the ordinary meaning the witness must be asked if there is anything to prevent these words conveying the meaning they ordinarily would convey, and if evidence is given and a foundation laid for it then the further question may be put, What do the jury understand by it?" It was ruled in *Dames* v. *Hartley* (3 Ex. 205) that it must first be shewn that a word has acquired a certain peculiar accepted meaning, and then a witness may be asked if he understood it in that sense as applied to plaintiff. Thus the word "lame duck" would be libellous if applied to a member of the Stock Exchange, as it has acquired a certain defamatory meaning (*Barnett* v. *Allen*, 3 H. & N. 381). In *Cook* v. *Hughes* (Ry. & M. 115) the defendant was held entitled to have the whole article read, and in *Pearce* v. *Ornsby* (1 M. & Rob. 456) the judge ruled that the whole conversation should be repeated so that the jury might draw their own conclusions as to how far the plaintiff was understood to be libelled or slandered. In *R.* v. *Watson* (2 T. R. 206) Buller, C.J., left it to the jury to read the libel and see what they as common-sense men understood by

it, and the same course was adopted in *Woolnoth and Meadows* (5 East, 463) by an equally eminent authority; and, in *Roberts* v. *Cambden* (9 East, 93) Ellenborough, C.J., said that the words are not to be construed by the Court in a better sense to that in which the rest of the world understands them, and that where words are susceptible of two meanings the jury was to decide which meaning was meant, and in forming that opinion should be guided by the impression which the words were calculated to make upon hearers or readers. After the verdict the words will be taken to have been used in their worst sense. As regards the effect of words used, words of mere suspicion or opinion are not actionable (*Hodgson* v. *Scarlett*, 1 B. & Ald. 243), nor is a *bonâ fide* opinion (*Amann* v. *Damm*, 8 C. B. N. S. 597), and where words are spoken of a person in connection with some confidential office to charge with mere incompetency and not want of integrity is not libellous.

The case of *O'Donnell* v. *Walter and another* illustrates this principle. This was before the Queen's Bench Division in July, 1888. The alleged libel were certain references in a notorious pamphlet called "Parnellism and Crime," which defendants pleaded did not directly point to plaintiff, that no imputations were made upon him directly or indirectly, and that he was not responsibly connected with and knew nothing of the organisation spoken of. A verdict was entered for the defendants with costs, on the ground that no one could understand the plaintiff as being libellously referred to in the book.

It often happens during the course of a trial that the meaning of certain disputed passages may be best understood and interpreted by a reference to the context, or frequently, in the case of newspapers, by a looking back upon previous numbers of the same journal. It is a disputable point how far such are

admissible, and no general rule can be laid down. In the only reported case where the question arose there was a division of the Irish Court on the point.

In *Bolton* v. *O'Brien* (16 L. R. Ir. 97) several libels were published of the plaintiff in the defendant's journal *United Ireland*. At the trial, other passages besides those containing the libels complained of in the paper were shown to witnesses. The defendant having obtained a conditional order for a new trial, it was held by May, C.J., that other passages in the same newspaper might be adduced in evidence to illustrate the meaning of the passages charged to be libellous, but it was held by O'Brien, J., that other publications of defendant, whether precedent, contemporaneous, or subsequent, were not admissible in evidence on the question of the sense of the libel unless directly referred to and in that way made virtually part of the libel complained of, and that they were only admissible in proof of malice or deliberation, or upon the question of damages.

In an unreported case of *Stokes* v. *The Freeman's Journal Co.*, tried at the Belfast March Assizes of 1889, the plaintiff, a Resident Magistrate, sued defendants for damages for alleging in their report of a speech that he was an "invincible magistrate." The meaning he put upon the words and which the jury upheld was, not that he was an unconquerable magistrate, but that he was a member of or associated with a murderous society of that name that did not actually exist—a very strained interpretation indeed, unwarranted by any possible supposition or colour of plausibility. For that one word so interpreted by the jury the paper was cast in 250*l.* damages.

In *R.* v. *Most* (13 Cox's C. C.), where the defendant wrote and published an article in a newspaper called

the *Freiheit*, which was sold to the public and also circulated among subscribers, the jury after reading the article in question found that it was intended and did encourage, and was an endeavour to persuade persons to murder foreign potentates, and that such encouragement and endeavour to persuade was the natural and reasonable effect of the writing. The defendant was held guilty of a misdemeanour within sect. 4 of the 24 & 25 Vict. c. 100, which provides that all persons who shall conspire, confederate or agree to murder any person, or who shall solicit, encourage and persuade or endeavour to persuade, &c., shall be guilty of a misdemeanour. Herr Most was sentenced to imprisonment accordingly.

In a demurrer motion before the Irish Queen's Bench Division (Morris, C.J., Harrison, Johnson, Holmes, JJ., being present), in the case of *Mrs. Mary Harrington* v. *Cork Constitution and Kerry Post*, for an alleged libel (the words charging her with inducing a man to go to gaol rather than give sureties for good behaviour), the Court reviewed the oft quoted case of *Mawe* v. *Piggott* (*supra*), where the plaintiff sought damages for an article in the *Irishman* charging him with helping the cause of order and law, and it was averred such a charge was defamatory and brought him into patriotic disrepute—the reverse of the present case—and in which it was held on demurrer allowed that the words were not reasonably capable of a libellous interpretation. In the case of Mrs. Harrington a doubt arose as to the meaning of the words, and the Court held it was for the jury ultimately to decide the meaning attachable to them, not for the Court at that stage; but such an issue as to the sufficiency of the words was properly raisable upon demurrer as upon arrest of judgment.

CHAPTER IV.

MALICE — LIMITATIONS OF ACTIONS — SPECIAL DAMAGE — PREVIOUS REPUTATION — RESTRAINT BY INJUNCTION — CONTEMPT OF COURT.

MALICE is a word in its legal sense hard accurately to define, yet it is the determining element in libel actions. From ordinary colloquial use it has been adapted into legal phraseology with a good deal of its original vagueness about it, yet it has now received a pretty definite legal meaning. Its ordinary dictionary signification is, according to Johnson, (1) badness of design; deliberate mischief; (2) ill-intention to any one: desire of hurting — while Webster defines it as: "extreme enmity of heart or malevolence; a disposition to injure others without cause from mere personal gratification or from a spirit of revenge; unprovoked malignity or spite." According to M. Littré, malice in French is "inclination à mal faire." But these give no indication of its use in law. Malice in reference to murder means an intention to cause the death, or a knowledge of the probable results of the act, but in regard to libel malice means no more than "the intentional publication of a defamatory statement, not excused on certain grounds, as, for instance (in certain cases), by the truth of the matter published, or, in certain other cases, by an honest belief in the truth of the matter published."

A very good proof of malice and a disproof of any allegation as to the publication being made through inadvertence is the previous continued publication of

the matter complained of, or a habit of systematic libelling of the plaintiff, and the nearer these publications are to the date of the actual libel the more weighty they are (per Parke, B., in *Barrett* v. *Long*, 3 H. L. C. 395; *Brine* v. *Bazalgette*, 3 Ex. 692; *Gilpin* v. *Fowler*, 9 Ex. 915; *Sampson* v. *Robinson*, 12 Q. B. 511; *Cook* v. *Wildes*, 5 El. & Bl. 328; *Camfield* v. *Bird*, 3 C. & K. 56). "Matters occurring after action brought may be given in evidence to enhance the damages, as showing the malice of the original publication, just as a repetition of the same or a similar libel may be" (per Pollock, C.B., *Darby* v. *Ouseley*, 1 H. & N. 9). Where the circumstances under which a particular communication is made are consistent with the presence or absence of malice, it will be incumbent upon the plaintiff to prove malice in order that he may successfully sue for libel, and where the circumstances do not present any justifiable occasion it is not privileged—Maule, J., in *Wenman* v. *Ash* (13 C. B. 846). The law permits the inference of malice to be rebutted by proof of circumstances showing privilege, but it can be rebutted by evidence of express malice. The rule, says Campbell, C.J. in *Taylor* v. *Hawkins* (16 Q. B. 321), is that, if the occasion be such as repels the presumption of malice, the communication is privileged, and the plaintiff must then, if he can, give evidence of malice. If he adduces no such evidence, it is the office of the judge to say there is no question for the jury and to direct a nonsuit or a verdict for the defendant."

In the cases of *Somerville* v. *Hawkins* (10 C. P. 583, 20 L. J. 131) and *Taylor* v. *Hawkins* (*supra* and 20 L. J. Q. B. 313), the principle was laid down that if there was no evidence of malice the judge ought not to leave any question to the jury. These clearly determine the general principles.

Campbell, C.J., in *Ferguson* v. *Earl of Kinnoull* (9 Cl. & F. 321) held malice to be not mere personal spite but a conscious violation of the law, and was a matter for inquiry (*Hooper* v. *Truscott*, 2 Bing. N. S. 457; *Watkin* v. *Hall*, L. R. 3 Q. B. 396; *Spill* v. *Maule*, L. R. 4 Ex. 236).

In slander of title malice must be proved (*Wren* v. *Weild*, L. R. 4 Q. B. 730). When a statement is not made on a lawful occasion to rebut the presumption of malice the law will conclude the act to be malicious (*Baylis* v. *Laurence*, 11 A. & E. 920; *O'Brien* v. *Clement*, 15 M. & W. 43).

Further illustrations of the principle will be found treated of in the chapter on privileged communications and the law regulating the same. In all these matters the question of malice is an essential element.

Limitation. All actions for slander must be commenced two years after the cause of action arose, and all actions for libel within six years after the libel. In slander that results in damages the period is to run from the date of the damage and not of the slander (*Saunders* v. *Edwards*, 1 Sid. 95).

Special Damage. Where special damage is alleged it must, as a matter of course, be proved, and rebutting evidence may be given to the contrary (*Wyatt* v. *Gore*, Holt, N. P. 299, and *Harrison* v. *Pearce*, *ibid.*). As to the question of the previous reputation of a plaintiff being a matter for consideration in mitigation of damages, in *Jones* v. *Stevens* (11 Price's Reports), there was judgment that evidence of the evil reputation of the plaintiff was not admissible to mitigate damages, but in *Scott* v. *Sampson* (8 Q. B. D. 491) it was held by Cave, J., that the damage which a man has sus-

tained must depend on the estimation in which he is previously held. To enable the jury to estimate the probable *quantum* of injury sustained, a knowledge of the party's previous character is not only material but absolutely essential. To deny this would, as wrote Starkie in his notes on *Evidence*, be to decide that a man of the worst character is entitled to the same measure of damages as is one of unsullied and unblemished reputation. The view of Cave, J., was upheld by Coleridge, C.J., in *Wood* v. *Cox* (4 T. L. R. 654), who thought it a sound and sensible rule. In the case of *Duplany* v. *Davis* (3 T. L. R. 185), before Coleridge, C.J., and special jury, an action was brought by an actor (formerly a waiter) against an editor for statements calculated to injure him in his new profession. The defence pleaded was the statutory defence under Lord Campbell's Act that it was published without actual malice, and that an apology had been inserted. A sum of 10*l.* was paid into Court, the matter was left to jury, and 100*l.* damages awarded.

Previous Reputation. It was often disputed, as a matter of practice, whether evidence of character could be given in a libel action, but the point was clearly decided in *Wood* v. *Durham* (22 Q. B. D. 304). The plaintiff was a professional jockey, and sued to recover damages for a libel charging him with unfairly and dishonestly riding the horses of a particular stable. The defendant pleaded justification, and afterwards applied to amend his defence by additional allegation that at "the date of the publication the plaintiff was commonly reputed to have been in the habit of unfairly and dishonestly riding horses in races so as to prevent them from winning." Held, that as general evidence of the plaintiff's bad reputation (if admissible) could

only be given in reduction of damages and not in answer to the action, the paragraph did not contain a statement of material fact on which the defendant relied for his defence within the meaning of Order XIX. r. 4, as a ground of defence which must be raised under Order XIX., r. 5, but was a denial or defence as to damages claimed or their amount within the meaning of Order XXII. r. 4, and therefore ought not to be pleaded, and leave to amend must be refused. In *Scott* v. *Sampson* (8 Q. B. D. 491) the defendant was allowed to give general evidence of reputation for the purpose of shewing that the plaintiff did not bear such a character as would suffer by the publication of the libel. Here the plaintiff had endeavoured to extort money by a threat of publishing defamatory statements concerning a deceased actress, and the Court held that evidence of rumours before the publication of the libel to the effect that the plaintiff had committed the offences charged in it, and evidence of particular facts and offences tending to shew the misconduct of the plaintiff as a critic could only be admitted in reduction of damages and assuming them to be material that they were not improperly rejected as they were not referred to in the pleading as required by Order XIX., 224. And in *Leicester* v. *Walter* (2 Camp. 251), where in assessing damages, reports had been proved as showing that the damages that could be brought could only be trifling. In *Knoxbull* v. *Fuller* (Peake Add. Cases, 129) also facts and circumstances amounting to suspicion but not to actual proof were allowed to be proved in mitigation of damages. In *Garner* v. *Merle* (not reported) Lord Ellenborough permitted defendant to prove rumours in mitigation of damages. And according to *De Bensaude* v. *Conservative Newspaper Co.* (3 T. L. R. 539), it does not follow that because

a man has a tainted reputation he may not recover damages for a libel upon it.

Restraint by Injunction. The Court of Chancery will always exercise its power to restrain the continued publication of a libel (*Clarke* v. *Freeman*, 11 Beav. 112). Where a rival publisher advertises a work to lead the public to believe it is another book, the Court will intervene (*Seely* v. *Fisher*, 11 Sim. 551), but will not to prevent the publication of a disparaging advertisement (*ibid.*). The Court has no power to restrain a libel injurious to a trade (*Thomas* v. *Williams*, 14 Ch. D. 864); but in *Thorley Food Co.* v. *Massam* (6 Ch. D. 582) and *Hinricks* v. *Berndes* (W. N. 1878) a libel of that character was restrained. Nor can it interfere with a libel injurious to a property (*Prudential Assurance Co.* v. *Knott*, L. R. 10 Ch. 142; *Hammersmith Skating Rink Co.* v. *Dublin Skating Rink Co.*, I. R. 10 Eq. 235). It can restrain the defamatory circular of a solicitor to the shareholders of a company (*Quartz Hill Gold Co.* v. *Beall*, C. A. 20 Ch. D. 501), but never unless the statements are untrue. Nor are they actionable unless express malice is proved, but it will restrain untrue statements however injurious (*Hill* v. *Hart Davis*, 31 W. R. 22; 21 Ch. D. 798). It can restrain a libellous advertisement and impose a fine for any damages caused by the publication (*Kerr* v. *Gandy*, 3 T. L. R. 76).

If a statement of claim contain charges injurious to a defendant, and the plaintiff circulate copies among parties not interested in hearing the information, the Court can restrain the further publication (*Bowden* v. *Russell*, 46 L. J. Ch. 414). It is extremely injudicious to refer to and comment upon a case at hearing, and the Court very properly visits such interference with severity whenever it is brought before its notice.

Lord Hatherley, in *Tichborne* v. *Mostyn*, reported in the note to *Daw* v. *Eley* (L. R. 1 Eq. p. 55), determined this, and in *Golding* v. *Morel Bros.*, *Cobbett & Sons*, before Chancery Division (4 T. L. R. 198), Kay, J., said he always understood the result of the authorities to be that any publication in a newspaper pending the trial of an action which might tend to prejudice the fair trial of the suit either by creating a bias in the public mind or in the mind of anybody, or by influencing a witness who might be called in support of one or the other side, was beyond the limits within which the Court confined those who commented on matters which were the subject of pending proceedings and could be dealt with. In Seton on *Decrees*, vol. i. p. 254, a form of injunction which can be granted in such a case is given.

In *Hermann Loog* v. *Bean* (26 Ch. Div. 306) it was decided that the Court had power to restrain a person from making slanderous statements, written or oral, which were calculated to injure the business of another, but mere depreciatory criticism, not being false and malicious, by one tradesman on the goods of another is not actionable (*Young* v. *Macrae*, 3 B. & S. 364; *Harman* v. *Delaney*, 2 Ni. 898; *Evans* v. *Harlow*, 5 Q. B. 624, and *Western Counties Co.* v. *Lawes*, L. R. 9 Ex. 218). Very often an attempt is made to restrain the publication of letters sent to a person. This involves a collateral issue as to the ownership of such letters. The case of the *Earl of Lytton* v. *Swan*, *Sonnenschein & Co.* (decided by V.-C. Bacon in 1883) settled the point, and is one of importance to correspondents. There (reported in T. L. R. 41) it was held, following the principle of law laid down in *Pope* v. *Curl* (2 Atk. 342), and *Thompson* v. *Stanhope* (Ambler, 737), that the property of the letters remained in those to whom

they were sent, but that the writer of them had that kind of interest in them that he had a right to restrain the publication of their contents. The right of publication was based on the principle only that if the letters contained materials which made it necessary for the sender to use them for his own justification or for the vindication of his character from any charge then their contents might be published. An injunction was granted, restraining the publication of the letters in question which were letters written by the late Lord Lytton to his wife and sought to be published by her authority, but she was so restrained on the application of the son of the deceased.

The power of the Court to grant an interlocutory injunction to restrain the publication of libellous matter injurious to a plaintiff rests on well-recognised principles. Kekewich, J., held, in the case of *Liverpool Household Stores Association* v. *Egerton Smith & Co. and Lovell* (4 T. L. R. 28), that it was competent to the Court to grant an interlocutory injunction in cases of libel and slander; but there was "this distinction in such actions, that the issue at the trial came before a jury and not the Court, and it was therefore incumbent on the Court to be very cautious in making an ad interim order, which might possibly influence the verdict at the trial as being a judicial opinion upon its merits." He refused to grant the particular motion, but gave costs. The questionable matter was letters reflecting on the solvency of the Company. Cotton, L.J., on appeal in same case, followed the rule laid down in *Coulson* v. *Coulson* (3 T. L. R. 847), which should in his opinion guide such decisions. It was this, that "to justify the Court in granting an interim injunction it must come to a decision upon the question of libel or no libel before the jury decided

whether it was a libel or not; therefore the jurisdiction was of a delicate nature. It ought only to be exercised in the clearest cases, where any jury would say that the matter complained of was libellous, and that where if the jury did not so find the Court would set aside the verdict as unreasonable." It would be dangerous to grant an interlocutory injunction unless the Court could lay down a line as to what would be libellous, and it would be very undesirable to restrain the fair discussion in a newspaper of a matter of public interest, such as the prospectus of a public company. In *Hill* v. *Hart Davis* (21 Ch. D. 798) there was an existing document before the Court which was proved to contain incorrect statements, and an injunction was granted by Kay, J., with reference to that document. In *Hermann Loog* v. *Bean* (26 Ch. D. 306) the defendant had been in service of plaintiff, and he was only restrained from making injurious representations to the plaintiff's customers. Lopes, L.J., in the appeal on the above-cited case of *Liverpool Household, &c.* v. *Egerton Smith & Co.*, stated that it was clear that since the Judicature Act the Court had and would exercise the power of restraining the publication of libellous and slanderous matter which was immediately calculated to injure the property or trade of the person against whom it was directed. It was not in that case absolutely clear that the jury would hold it was a libel, and therefore the Court below was right in refusing the order (4 T. L. R. 96).

Another recent case of *William Turnour Thomas Poulett* (commonly called *Viscount Hinton*) v. *Chatto & Windus and Edward Walford* (4 T. L. R. 96), illustrates the guiding principle in these actions. Here an attempt was made to restrain the publication, in a book called the "County Families," of a certain statement

reflecting on the legitimacy of the plaintiff, and so alleged to be libellous. The Court followed the decision in *Quartz Hill Gold Co.* v. *Beale* (20 Ch. D. 501), to the effect that, though the Court undoubtedly had jurisdiction to grant an interlocutory application to restrain the publication of an alleged libel, yet such power would be exercised very carefully, and would not in general be exercised at all unless the applicant satisfied the Court that the statements in document were untrue. This decision was appealed against, and on the trial of the appeal the judgment was upheld—Cotton, L.J. holding that, though the jurisdiction of Court to grant an injunction was undoubted, it should only be exercised with great caution where the Court was satisfied the jury ought to or would find that there was a libel" (4 T. L. R. 142).

Cases of an analogous kind often arise where under the Copyright Act a person seeks to restrain another from publishing matter protected and copyrighted by him. In *Cape and others* v. *The Devon & Exeter Constitutional Newspaper Co.*, the plaintiffs sought to restrain the defendants from publishing in their newspapers certain particulars respecting judgments, bills of sale, &c., and which were originally published in three newspapers owned by plaintiffs, jointly and severally, and joined for purposes of the action (principally *Stubbs's Gazette* and two other separate publications), and all three of which were duly registered under the Copyright Act of 1842 as serial publications, but were issued only to subscribers. The proprietors were not registered under the Newspaper Libel and Registration Act of 1881. Defendant relied on this among other pleas and also that the information sought to be protected was a mere copy of public returns. North, J., in his judgment incidentally

referred to the fact, as to whether there could be a copyright in a newspaper. In *Cox* v. *Land and Water Co.* (L. R. 9 Eq. 392) Vice-Chancellor Bacon ruled that a newspaper was not within the Copyright Act, but in *Walter* v. *Howe* (17 Ch. D. 708) the late Master of the Rolls held the contrary view, and was of opinion that a newspaper was within the Act, and required registration. [Sect. 19 of the Act provides that "the proprietor of the copyright of such a work should be entitled to all the benefits of registration on entering in the book of registry the title of such encyclopædia, review, periodical, or other work published in a series of books or parts, the time of publication of the first volume, number or part itself, and the name and place of abode of the proprietor thereof, and the publisher thereof when such publisher shall not be the proprietor thereof."] Objection was taken that the date of the first number of the copyrighted paper and the date of its registry did not correspond, and that the number registered was not therefore the first number; but this was overruled on the ground that it was for defendant to prove it was not the first number. It was also pleaded that the proprietors, not being registered under Act of 1881, could not sue, but it was held that it was the duty of the publisher under that Act to register, and that the proprietors were not to be deprived of their rights by reason of the default or neglect of their publisher. Finally a *perpetual* injunction was granted, restraining the defendants from publishing such information as was contained in these three papers (5 T. L. R. 231). On *appeal* Cotton, L.J., affirming the decision granting a perpetual injunction, followed the lines laid down in *Walter* v. *Howe* (*supra*) that the proprietor of a newspaper should register his newspaper, and was

not required to register the particular work in which he had copyright. The case of *Jeffreys* v. *Boosey* (4 H. L. C. 992) was referred to, but Lord St. Leonards there ruled that a copyright could not be divided by assignment in such a way as to limit it to certain localities. Lindley, L.J., concurred with Lord Justice Cotton, and remarked that the compilation was not a mere copy from public documents but a work of sufficient originality to claim protection, and had some brain work bestowed on it (5 T. L. R. 255).

The law regarding rights in titles of books is not as satisfactory or as clear as it might be. Although there is no copyright in titles, it is open to the author of a twopenny pamphlet of very limited circulation and of no literary value to apply for an injunction against the publication of a work that has cost its publisher hundreds of pounds to produce, on the ground of infringement of trade mark. The opportunity thus afforded of levying blackmail is not neglected. (See Scrutton on Copyright, pp. 30 and 173.)

In the unreported case of *Brown & Maxwell* v. *Scott*, decided in the Queen's Bench Division on 12 Jan., 1888, a very peculiar motion was made. It was there sought to restrain the parties in a pending libel suit from discussing at a public meeting, to the prejudice of the case pending, any matters connected with the alleged libel. The two parties were drapers resident in Taunton, and the paper the *Credit Drapers' Gazette*, was charged with the offence. A meeting of the Drapers' Association was about to be held, and it was supposed Scott, the defendant, might move a resolution condemnatory of conduct of the litigants, and it was sought to restrain him from moving any such resolution or entering into any such discussion. Mr. Odgers, who appeared in the case, stated he had plenty

of authority for the application, but it was shown on the other side that such discussion was not probable, as it was not contemplated by the programme of proceedings of meeting. Manisty J., (who with Grantham, J., heard the case) observed that if the defendant did make the pending action a theme for any discussion he would be liable to serious consequences; but, reserving the question of costs until the trial of libel action, the Court did not think a sufficiently strong case for an injunction had been made out.

In *Hayward & Co.* v. *Hayward & Sons* (34 Ch. D. 198), where the defendants published a circular reflecting upon the plaintiffs, and misrepresenting the effect of a judgment obtained to restrain them from trading under the same name, it was held that the circular contained an untrue statement of the judgment, that it was a libel injurious to plaintiffs and published maliciously, and an injunction was granted restraining further publication; but as there was no evidence of damage beyond the plaintiffs' affidavit that the circular was calculated to injure them, and as action was not brought till three months after the circular came under their notice, only 5*l.* damages were awarded.

In case of *Stanley* v. *Troup* (Ch. Div.) before North, J., defendant was restrained from publishing until six months after the official account any account of the Stanley Expedition (T. L. R. July 1889, p. 635).

Contempt of Court—what constitutes it and how it is treated.

The Courts very properly visit any attempts on the part of newspapers or writers to influence or prejudically criticise pending proceedings, and views with disfavour editorial comments upon any matter un-

determined (*In re Ledger, Dallas* v. *Ledger*, 52 J. P. 328).

Chitty, J., in the case of the *Metropolitan Music Hall Co.* v. *Lake and others* (which was an effort to commit the editor and printer of the *Financial News* for contempt of Court for publishing an article said to be calculated to interfere with the free course of justice), decided to refuse the motion as not being a *bonâ fide* one, and because the publication was not likely to influence the decision of the Court. The learned judge took occasion to review the doctrine of *scienter*, and as to whether and how far a person might be held guilty of contempt of Court in commenting upon a pending case, whether he knew the case was so pending or not. "If what was published reflected upon the applicant, and was calculated to operate prejudicially to his action, he was entitled to come into Court and say whether what was said was or was not true and interfered with his rights as a litigant, and to sue protection of the Court. Of course, if it were a mere libel, he would be entitled to his remedy in another way." In the case before him, the learned judge ruled, however, that the article was not open to that objection, and it would be a strained interpretation of the law to hold that it could affect the applicant's rights before a jury (5 T. L. R.).

In *Brodribb* v. *Brodribb* (56 L. J. 672), the defendant after the service of a citation upon him as co-respondent in a divorce suit, forthwith caused to be inserted in the local newspaper an identical communication denying the statements in the petition, and offering a reward for information concerning them. Such action was held to be a contempt of Court. And where on the hearing of a petition one solicitor characteristically called another abusive names and spoke slanderous words of his conduct in connec-

tion with proceedings, and even shook his fist at him, such conduct and language were held an interference with the administration of justice and a contempt of Court for which the judge had power to commit (*In re Johnson*, 20 Q. B. D. 68; *Ex parte Wilton*, 1 Dowe, N. S. 805, discussed). A writ of attachment was issued against a defendant in a divorce suit for causing an advertisement to appear calculated to prejudice the petitioner's case. This was a notice seeking information of the birth of a child "probably not registered" (*Butler* v. *Butler*, 13 P. D. 73, 57 L. J. P. 16). From these typical cases it is evident that the Courts very properly exercise a strict and jealous control over any attempts at criticising or commenting upon pending proceedings, and this is a power no lover of free and impartial justice would ever wish to see curtailed, restricted or cut down.

Mr. F. H. Fisher, B.L., Middle Temple, sends the editor the following note of a case decided May 20, 1889, in the Queen's Bench Division:—"The case of *Hunt* v. *Clarke*, *In re O'Malley*, the publisher of *The Star* newspaper, in the Queen's Bench Division, is of interest to newspaper proprietors and editors. A paragraph had been inserted in *The Star* expanding an entry in the Cause List, and it was alleged that this constituted a contempt of Court. The paragraph was headed 'To Investors and Others,' and concluded thus: 'Mourners over the Moldacot *fiasco* are likely to hear a little inside history of the business.' The tendency to gag the Press shown in recent decisions seemed to favour the idea that such a motion would succeed, but we are glad to find Mr. Justice Mathew remarking that 'he could not divest himself of the impression that the court on this occasion had been made the victim of a practical joke.'

As Mr. Justice Grantham concurred, the application was dismissed with costs. Nevertheless, *The Star* will have had to pay something considerable for vindicating the liberty of the Press, as every one who has been into Court knows but too well." As will be seen by the report of the case appearing in appendix, this ruling was practically reversed on appeal—the Court of Appeal holding that such remarks were reprehensible.

These cases will fairly illustrate the principle regulating such actions. In the *Plate Co.* v. *Farquharson* (17 Ch. D. R.) the Court of Appeal upheld the dismissal of an action of a similar character, the Master of the Rolls holding that such motions ought to be discouraged: as "unless the publication really interferes with the course of justice the Courts ought not to interfere." *In re Cheltenham Railway Co.*, a publication concerning a pending case was held a contempt: and in *Daw* v. *Eley* (7 L. R. Ex.) and *Tichborne* v. *Mostyn* (7 L. R. Ex.) a similar ruling was adopted where also remarks were made in a newspaper calculated to prejudice the trial. In an unreported case of *R.* v. *Gray*, the late Mr. E. Dwyer Gray, M.P., was sentenced by Lawson, J., in 1882, to fine and imprisonment for publishing in the *Freeman's Journal* a letter commenting upon the misconduct of a jury in a capital offence, although the facts commented upon were undisputed.

CHAPTER V.

WHAT IS FAIR COMMENT?

A MATTER of considerable importance arising out of the Libel Act relates to the question of what remarks are entitled to the privilege of exemption under the immunity recognised as "fair comment." This is a limit very difficult to determine, and no hard-and-fast line can be laid down. The tendency of judicial decisions and of the verdicts of juries who are the ultimate judges of the question seems to recognise that a writer is entitled to comment upon all public questions and the conduct of public men as such, so long as his comments are fair, honest, and written with a due regard to what truth, decency and justice dictate.

Mr. Justice Stephen in his Draft Digest defines the doctrine of fair comment in the following words, which are expressive of the principle which should regulate that very delicate dogma of journalistic rights:—

"A fair comment is a comment which is either true or which if false expresses the real opinion of its author (as to the existence of a matter of fact or otherwise), such opinion having been formed with a reasonable degree of care and on reasonable grounds" (Digest, art. 247, p. 189).

This definition applies to either civil or criminal libels, and accurately represents the tendency and principle of judicial decisions upon this point. It has been held that a fair and honest discussion of or comment upon a matter of public interest is in point of

law protected unless evidence of malice is shown (*Henwood* v. *Harrison*, L. R. 7 C. P. 606). In the most recent case before the English Courts of *Merivale and Wife* v. *Carson*, first tried in Queen's Bench Division before Field, J. and a special jury, the law of public criticism was fully expounded. A play entitled the *Whiphand* was the subject matter of the editorial remarks, there being an imputation as to the originality and morality of the piece. There was no question of privilege raised, and it was held by the judge that many circumstances might justify or excuse a writing, which without such justification would be libellous. "It might be true, it might be false, and yet excusable, that is where published under privilege; and, thirdly, "it might be excused by the right of any person in this country, a very just and wholesome right to express his honest opinion upon the conduct of any other person in his public character." There was no peculiarity in the position of a newspaper writer. He (the judge) and those he was addressing possessed the right equally. It was the function of newspapers to collect information upon matters of public concern, and to comment upon public occurrences, and nothing in his Lordship's opinion was so conducive to the formation of sound public opinion upon morality and every other question as the honest expression of opinion by public writers, so long as it was done temperately and honestly. "But, if it descended to private malice or unfounded imputation, it was an interference with private rights. The question for the jury to decide was whether it was a fair, moderate, and honest criticism. It need not be sound or correct, or such as they themselves would write, "and a mere exaggeration was not libellous." The construction to be put upon the words was thus left to

the jury, and a verdict for a shilling damages returned. This able exposition of the law was subsequently upheld in the Court of Appeal, when the same question and same case were reviewed (see *infra*). There it was held that if the comment were "fair," and that was the only matter to be left to the jury, it was no libel, while as regards a report if it is fairly accurate it was *privileged*, and, being such, to rebut the privilege express malice must be proved. This case fairly represents the distinction between reports and comments.

The protection extended by the Indian Penal Code to writers and speakers shews us that the English law has yet much to learn in the desirable direction of liberality. There we find protected (1) imputations both true, and such that their publication is for the public good; (2) opinions as to the public conduct of public servants; (3) imputations on the conduct of any person as to public questions; (4) criticisms made in good faith on legal proceedings, and the conduct of those concerned in them; (5) criticisms on public performances or matters submitted to public criticism; (6) answers by an inferior to a superior; (7) accusations made to a superior in good faith; (8) imputations made in good faith for the protection of the character of the defamer; (9) cautions given in good faith to a party interested for his protection or the public good." The late Liberal Lord Chancellor, Lord Herschell, in an able judgment said: "There is no doubt that the public acts of a public man may lawfully be made the subject of fair comment or criticism, not only by the Press but by all members of the public. But the distinction cannot be too clearly borne in mind between comment or criticism and allegations of fact, such as that disgraceful acts have been committed, or discreditable language used.

It is one thing to comment upon or criticise even with severity the acknowledged or proved acts of a public man, and quite another thing to assert that he has been guilty of particular acts of misconduct." Mr. Justice Compton's previous opinion in *Campbell* v. *Spottiswoode* (3 B. & S. 778) is in the same direction. "Nothing is more important than that fair and full latitude of discussion should be allowed to writers upon any public matter, whether it be the conduct of public men or the proceedings in a court of justice or in Parliament, or the publication of a scheme, or of a literary work. But it is always to be left to the jury to say whether the publication has gone beyond the limits of a fair comment on the subject matter discussed. A writer is not entitled to outstep these limits." In nearly every case a fair and *bonâ fide* comment is justified (*Wason* v. *Walter*, L. R. 4 Q. B. 93–94), and so long as the remarks deal with a matter of public concern (*Henwood* v. *Harrison*, 26 L. J. 235; *Campbell* v. *Spottiswoode* (*supra*). The public acts of public men are fairly criticisable by all persons as laid down in *Davis & Sons* v. *Shepstone* (11 Ap. C. 187; 55 L. J. P. C. 51), and it was held the right of a citizen to comment upon the acts of a public man (*Kane* v. *Mulvanny*, Ir. R. 2 C. L. 402; *Lefroy* v. *Burnside*, 4 Ir. L. R. 340). Of course stating libellous facts is no defence (*R.* v. *Flowers*, 44 J. P. 377; *Hibbins* v. *Lee*, 4 F. & F. 243; *Helsham* v. *Blackwood*, 11 C. B. 111; *R.* v. *White*, 1 Camp.), nor making reckless charges without due inquiry (*Campbell* v. *Spottiswoode*, 3 B. & S. 776), nor imputing improper motives (*Cooper* v. *Lawson*, 8 A. & E. 746; *Seymour* v. *Butterworth*, 3 F. & F. 372; *Parmiter* v. *Coupland*, 6 M. & W. 105; *Harle* v. *Catherall*, 14 L. T. 801; *Wason* v. *Walter*, L. R. 4 Q. B. 93; *Purcell* v. *Sowler* (C.A.), 2 C. P. D. 215). Where a matter is of public interest even

severe comment is allowable such as in criticising a book (*Sir John Carr* v. *Hood*, 1 Camp. 355; *Tabart* v. *Tipper*, 1 Camp. 351), or a picture (*Thomson* v. *Shackwell*, Moo. & Mal. 182; *Whistler* v. *Ruskin, Times*, Nov. 1878), or architectural plans (*Gathercole* v. *Miall*, 15 M. & W. 334). In *Straus* v. *Francis* (4 F. & F. 1107), "a man," says Cockburn, J., "who publishes a book challenges criticism," but the criticism must not attack the private character of the author (*Fraser* v. *Berkeley*, 7 C. & P. 621; *Heriot* v. *Stuart*, 1 Esp. 437; *Stuart* v. *Lowell*, 2 Stark. 93; *Campbell* v. *Spottiswoode*, 3 B. & S. 769; *Whistler* v. *Ruskin, Times*, 1878; *R.* v. *Ledger, Times*, 80; *Dibdin* v. *Swan*, 1 Esp. 28; *Green* v. *Chapman*, 4 Bing. N. C. 92, 5 Scott, 340; *Morrison* v. *Belcher*, 3 F. & F. 614; *Duplany* v. *Davis*, 3 T. L. R.; *Merivale* v. *Carson*, 3 T.L.R.) all deal with what is fair criticism. As to its *bonâ fides* as a justification that is a defence (*Macleod* v. *Wakeley*, 3 C. & S. 311), and so if fair, reasonable and temperate, though erroneous (*Soane* v. *Knight*, M. & M. 74), or however strong it may be unless reckless (*Straus* v. *Francis*, 4 F. & F. 1107). The placard bill or advertisement of a trader is a fair subject for criticism (*Paris* v. *Levy*, 9 C. B. N. S. 342), and in this and all criticisms mere ridicule is not libellous (*Carr* v. *Hood*, 1 Camp. 355). Mere verbal errors or trifling inaccuracies are not sufficient to destroy the immunity, for writers like other human beings must err, and, as Chief Justice Cockburn said, "it is not to be expected that a public journalist will always be infallible."

A case was tried at the Liverpool Assizes in May, 1889, where a Catholic clergyman, the Rev. Mr. Dowling, sued Messrs. Tinling & Co., the proprietors of the *Courier*, for libellous remarks upon him in connection with his presence at a meeting at which some curiously

violent language was used by one of the speakers. The plea put in was that of fair comment and that it was a matter of public interest, and the editor proved that he wrote the article upon the faith of the report of the proceedings furnished. It appeared from evidence of the plaintiff that, though he attended the meeting, he left before the objectionable remarks were made which were the subject of the newspaper comment, and that he wrote to the paper correcting their mistake in that respect, but that neither explanation nor apology was offered. The jury accordingly found for plaintiff in £50 damages, and a similar action by another clergyman, who was in the same way spoken of, and under the same circumstances, as to his attendance at the meeting, was compromised by all parties accepting the finding in verdict in first case and abiding by it. In *Hibbins* v. *Lee* (4 F. & F. 247), comment on a concluded law suit was allowed; but it was not held justifiable if any evidence not produced in Court were introduced into the criticism. In *Wilson* v. *Reed and others* (2 F. & F.), the corrupt practices at an election were justifiably commented upon. Authoritative decisions on points besides those mentioned will be found in *Bryce* v. *Rusden* (2 T. & R. 435); *Brenon* v. *Ridgeway* (3 T. L. R. 592); *Walker* v. *Brogden* (19 C. B. N. S. 565); *R.* v. *Gray* (26 Q. P. 662). In *Campbell and Spottiswoode* Cockburn, C.J., remarked that no man had a right to impute improper motives to another unless he has honest grounds for his belief, and that they were not without foundation. He further added that "where the public conduct of a public man is open to animadversion, and if a writer who is commenting upon it makes imputations on his motives, which arise fairly and legitimately out of his conduct, so that a jury will say that the criticism was not only honest but well

founded, an action is not maintainable. But it is not because a public writer himself fancies that the conduct of a public man is open to the suspicion of dishonesty that therefore he is justified in assailing that conduct as dishonest" (3 B. & S. 778). In *R.* v. *Flowers* (*supra*) stating libellous facts was held not to be a fair exercise of the privilege of comment, and in *R.* v. *White* (1 Camp.) a fair and temperate criticism on magisterial acts was held allowable. In the celebrated case of *R.* v. *Cuthill* (27 State Trials, 674), Lord Kenyon delivered some remarkable opinions as to the difference between license and liberty, stating that, while the liberty of the Press was dear to England, its licentiousness was odious. That liberty he defined to be "neither more nor less than this, that a man may publish anything which twelve of his countrymen think is not blameable." In this dictum a fair enough definition of a principle is laid down; yet strange does it seem that a man should suffer if he writes upon a public subject in such a way as suggests itself to the public conscience as right, though not to the twelve men who happen to be his judges in the jury box. The case of *Dallas* v. *Ledger*, tried in March 1888, shews that juries may lean heavily on writers who strive to discharge a public duty. There the editor of the *Era* spoke of the conduct of a woman who employed little girls as a travelling theatrical troupe, and *apropos* of a sentence of this person for assault at Grimsby, and *apropos* of the expression from the Bench that they disapproved of her use of the children. The article was mildness itself, and, with the exception of an expression about the proceedings at the Court throwing "a lurid light" upon the practices, not an objectionable word was in it. There was no imputation on any person, nor anything except a just condemnation of employing children in

such practices. This was the opinion of Coleridge, C.J., who would, as he explained during a subsequent application for costs, have directed a non-suit if he had been asked, and who charged unmistakably for the defendant, yet a verdict for 40*s.* (carrying costs) was returned by the jury.

In the case (the first trial of which is mentioned above) of *Merivale and Wife* v. *Carson* (4 T. L. R. 126), brought from Queen's Bench Division to the Court of Appeal, and finally decided there by Esher, L.J., and Bowen, L.J., an important point respecting the limits of fair criticism was decided. The action briefly was for an adverse criticism in a newspaper of a certain play brought out by plaintiffs. The statement of claim alleged as an innuendo that the play was not original, and that the plot and action were based upon adultery. Mr. Justice Field, who tried the case originally, left it to the jury as to whether it was a fair, temperate and honest criticism or not. The Master of the Rolls, agreeing with the views taken by the jury as to the fairness of the criticism generally, stated that the law as to privilege was clearly laid down in the case of *Campbell* v. *Spottiswoode* (3 B. & S. 769), which said that a criticism upon a published work was not privileged. "A privileged occasion was an occasion upon which one person might do something with impunity which no other person could do." It was free and open for every one to criticise a published work; therefore such criticism was not a privileged occasion. In *Campbell* v. *Spottiswoode*, Compton, J., left it to the jury. "whether the publication had gone beyond the limits of a fair comment upon the subject discussed. What, then, was the meaning of fair comment? If in the opinion of the jury the criticism was beyond what any fair man, however prejudiced or however strong

his opinion might be, would make on the subject discussed, it was beyond the limits of fair comment and was libellous. What was within the phrase would depend on the circumstances of each case, and must in each case be left to the jury. Great latitude was allowed to a criticism of a published work, and even gross exaggeration might not make the comment unfair." The jury held that the criticism in fact misdescribed the play and cast an imputation on the author. "Fair criticism was," as Lord Tenterden in *McLeod* v. *Wakeley* (3 C. & P.) said, "whatever is fair and can reasonably be said of the works of authors or of themselves as connected with their works." In the cases of *Hibbs* v. *Wilkinson* (1 F. & F. 698), *Eastwood* v. *Holmes* (1 F. & F. 347), *Turnbull* v. *Bird* (2 F. & F. 523) "unfair" was held to mean dishonest, and in *Stevens* v. *Sampson* (5 Ex. Div. 53) "fair" was held to mean *bonâ fide*. For unfair, harsh and unjust remarks on the conduct of a newspaper correspondent exceeding fair comment, the *Saturday Review* was heavily hit in damages (*Williams* v. *Beresford Hope*, 3 T. L. R. 20).

The important points decided in the trial of *Merivale and Wife* v. *Carson* are thus summarized by Mr. Odgers:—

1. To write that a play is not original is clearly no libel on the author. Any one who thinks so may fearlessly say so. A charge of direct copying from another named play might be different.

2. To write of a play that it turns on adultery may be a libel on the author. It certainly is a libel on the author to state or imply that he has written a play in which adultery is treated as a venial offence, or as a fit matter for fun and levity, without any expression of moral reprobation, or without any punishment being inflicted on the adultress.

3. If there is any reasonable doubt whether a certain publication is or is not a libel, the question must be left to the jury; the judge must not stop the case.

4. If it is suggested that words which on the face of them are not libellous bear a secondary meaning (e.g. are used in a slang sense), the judge must decide whether the words are capable of such secondary meaning; if he says they are, then it is for the jury to decide which meaning they think the words did in fact convey to the mind of the reader. And from their decision on this point there is no appeal.

5. In deciding on the meaning of a criticism on a play or a book the jury must ask themselves, "How would persons who have never seen the play or read the book understand the criticism?" The play or book cannot be imported to aid in construing the critique; though it may be looked at afterwards, when the meaning of the words is determined, to see whether the criticism is fair.

6. If a critic instead of stating what he honestly thought of a book or a play denounced it in stronger terms than he himself believed it to deserve, then all immunity is lost; and that whether he did so from personal ill-will against the author, or from a love of smart writing and of saying sharp things.

7. But so long as a critic makes no attack on the author apart from his work, and makes no false assertion of facts about either, but honestly states his genuine opinion of the book or play on which his criticism is invited, then it is very difficult to say when the bounds of fair criticism are exceeded. It is clearly not necessary that the jury should agree with the critic; he is entitled to publish his own opinion, however mistaken or unsound others may think it. The jury are not asked whether he formed the opinion

with sufficient care or on reasonable grounds. So too the fact that his words are strong or even intemperate is not enough to make his criticism unfair. The judge shall ask the jury, "Is this criticism in your opinion beyond what any reasonable man, however prejudiced or however wrong his opinion might be, could fairly say of the work in question?" If the jury, after looking at the book or the play, think the criticism published by the defendant was such that no fair man could possibly have come to that conclusion about it, then and then only are they to find for the plaintiff."

The principles of the decision would seem to reduce the question of fair criticism or comment to clear, intelligible, and satisfactory grounds as between the press and the writer of the play or book, that while it protects, as the law should protect, fair, open, honest criticism, it does not sanction low, scurrilous, abusive and personal attacks in which the character of the author is assailed for the gratification of some private spleen or jealousy.

CHAPTER VI.

'WHAT ARE MATTERS OF PUBLIC INTEREST?

THE discussion of matters of public interest is privileged so long as it is fair, moderate, and honest. Under the head of "privileged reports," and what is "fair comment," cases have been and will be cited illustrating these general principles, but under the above special section a few words may be added. The effect and bearing of all judicial decisions is to hold that what are matters of public interest may be fairly divisible into the following seven classes, and, while they may not comprehend all possible cases, certainly nothing coming under them can be held not to be a matter of public interest. They are :—

1. Political matters and affairs of State.
2. The administration of justice.
3. Public institutions and the acts of local authorities.
4. Ecclesiastical and religious matters.
5. Any book, picture, painting, piece of sculpture or other work of art that has been published.
6. Theatres, concerts, dramatic and other public representations.
7. Charitable or philanthropic movements when appealing to the public or dependent upon public rates or subscriptions.

Anything touching these several matters and topics may fairly and safely be discussed.

In the Queen's Bench Division last year, before Huddleston, B., and a special jury, a very interesting case arose in which the issue as to what is a "matter of public interest" was raised and determined very clearly. The article complained of appeared in the Liverpool *Evening Express*, and was undoubtedly libellous. But, as the judge remarked, "all libellous matter was not actionable, as for, instance, in a newspaper where matter of public interest was fairly commented upon. The press had a right and ought properly to have the right to comment forcibly and vigorously upon all matters of public interest. Such comment, so long as it was fair and honest, was useful to all, and every one was more or less exposed to it, especially men in a public position. Therefore, so long as the Press did not go beyond the limits of fairness and indulge in malice or personal abuse, it was protected. It was part of their duty as jurymen to protect the Press in cases where they considered it had acted fairly and honestly, and in the public interest. The subject matter of the libel was of public and local interest, and if the article was a fair and *bonâ fide* comment upon a public matter of public and local interest where defendant's newspaper circulated and was published *bonâ fide* and without malice and for the benefit of the public and without any malicious intent or motive, their verdict must be for the defendants." The jury found for the defendants (*Riordan* v. *Wilcox and Others*, 4 T. L. R. 475). It is undoubted that, unless the Press were protected and safeguarded in its exercise of this right, all public discussion would be at an end, and the result would be injurious to the public; for, in the immunity from honest criticism that would result, jobbery, peculation, and every species of neglect of public duty

would be encouraged and protected. "A clergyman with his flock, an admiral with his fleet, a judge with his jury are all subjects of public discussion. Whoever fills a public position renders himself open thereto. He must accept an attack as a necessary appendage to his office," was the dictum of Bramwell, J., in the case of *Kelly* v. *Sherlock* (L. R. 1 Q. B.), and he did not push the penalty of publicity or the privilege of the Press too far. It is a wholesome, necessary, and useful check and corrective on injustice, extravagance, or neglect of public duty by those paid or who undertake to discharge that duty.

"Every man," said Lord Ellenborough, in *Carr and Hood* (1 Camp. 337), "who publishes a book commits himself to the judgment of the public, and any one may comment upon his performance. If the commentator does not step aside from the work or introduce fiction for the purpose of condemnation he exercises a fair and legitimate right, but if he follows the author into domestic life for the purpose of slander that will be libellous. The critic does a great service to the public who writes down any vapid or useless publication which ought never to have appeared. He checks the dissemination of bad taste and prevents people from wasting both their time and money upon trash. I speak of fair and candid criticism, and this every one has a right to publish although the author may suffer a loss, but it is such a loss the law does not consider an injury, and such a loss he ought to sustain. It is a loss of fame and profit to which he never was entitled." And Lord Kenyon in *Dibdin* v. *Swan* (1 Esp. 26) stated that "the editor of a public newspaper may fairly and candidly comment upon any place or species of public entertainment, but it must be

done without malice nor with a view to injure or prejudice the proprietor in the eyes of the public. If fairly done, however severe the censure, the justice of it screens the editor from legal animadversion, but, if it can be proved that the comment was malevolent and exceeded the bounds of fair opinion, then it is a libel and actionable."

This was clearly illustrated in the case of *Harvey* v. *Society Herald Co.* (*Limited*). The plaintiff was a clown in a pantomime, and certain comments on his conduct as such were the subject of the libel, as they conveyed the impression that his performances were unfit to be seen by children, "filthy conduct" being spoken of. Defendants pleaded fair comment, absence of malice and the truth of the libels, that the words did not bear the meaning attributed to them, that they were published without gross negligence, and that before action an apology was inserted. The jury nevertheless found for plaintiff in 200*l.*, as they considered the apology insufficient and insincere (Queen's Bench Division June, 1888).

The case of *Ginnett* v. *The Pall Mall Gazette* is a very significant commentary upon the shortcomings of the Libel Act, and its failure to protect a journalist in the exercise of his profession. That journal severely but not unduly criticised the cruel treatment of children employed in acrobatic performances, and for its comments upon a matter of public interest was heavily mulcted in 1500*l.* damages. The case was tried early this year, before Field, J., and a jury. The result of the finding was that this unusually intrepid journal refused subsequently to publish certain disclosures respecting similarly harsh treatment accorded a child named Curragh sent them by her father. The just remarks of the editor upon the subject are not

wholly inappropriate in this connection. In its issue of the 24th June the *Pall Mall Gazette* writes:—"We hope that the case of the father of the girl acrobat who slew the manager of the Letine troupe will lead juries to take a more reasonable view of the responsibilities of journalists than they have done of late years. But for the damages of 1500*l.* inflicted upon this journal for printing a letter from an Oxford undergraduate stating that some boy acrobats had been trained by torture in a certain circus, there would probably have been no murder at Lambeth on Friday. The unfortunate man who was driven mad by his inability to procure any publicity for the sufferings of his daughter in the troupe, would probably have retained his senses, and abstained from homicide, if he had but had an opportunity of publishing his grievance. It was the bitter conviction of the utter impossibility of making the wrongs which his child suffered known to the world that drove him to the desperate deed over which all are moralising to-day. But for the verdict in the Ginnett case, he might have had the satisfaction for which he longed. As it was, the ruinous damages awarded by the jury rendered it little short of suicidal for any newspaper to give publicity to his grievance. We are now face to face with the result. Letine has not been 'libelled' by the publication of the way in which the child was done to death. But he has been killed, and, on the whole, he has not much reason to be satisfied with the result of the protection which the law of libel secures to men in his position."

Comments upon the Administration of Justice. It is now conceded that comments upon the administration of the law, the verdicts of juries in cases, the conduct of suitors (after trial), or of the witnesses

examined, are such matters of public interest as to justify fair, honest criticism upon them (*Daw* v. *Eley*, L. R. 7 Eq. 49; *Lewis* v. *Levy*, E. B. & E. 537). This does not apply to any observations during the progress of the trial lest the jury should be biassed or in any way influenced or intimidated (*R.* v. *O'Dogherty*, 5 Cox's C. C. 348). When a trial is over a writer can point out any error committed by the judge or jury. Fitzgerald, J., in *R.* v. *Sullivan* (11 Cox's C. C. 57,) remarked that "the judges invite discussion of their acts in the administration of the law," and Cockburn, C.J., in *R.* v. *Tanfield* (42 J. P. 424) observed that writers can do so but not wantonly assail nor impute criminality. In *Lewis* v. *Walter* (4 B. & Ald. 605), *Risk Allah Bey* v. *Whitehurst and others* (18 L. T. 615) it was held allowable to say that the prisoners though acquitted were guilty. In *Roberts* v. *Brown* (10 Bing. 519), *Stiles* v. *Nokes* (1 East, 493), *Carr* v. *Jones* (7 East, 492), *Littler* v. *Thompson* (2 Beav. 129), *Felkin* v. *Herbert* (33 L. J. Ch. 294) imputing perjury to witnesses or witness was held libellous, or saying that their statements were recklessly false (*Hedley* v. *Barlow*, 4 F. & F. 224). One may not impute political motives to magisterial acts (*Hibbins* v. *Lee*, 4 F. & F. 243, 11 L. T. 541; *Woodgate* v. *Ridout*, 4 F. & F.) nor cast any imputations on suitors (*Weldon* v. *Johnson*, *Times*, May 1884). In *Harrison* v. *Bush* (5 E. & B. 344) a letter written complaining of the conduct of a magistrate was held allowable.

Sometimes a mistake is made in commenting upon the uncorroborated testimony of a witness at a trial. This was seen in *Roberts* v. *Daniel Owen & Co.* in Q. B. D., before Stephen, J., where certain libels were complained of by a clergyman as appearing in the *Western Mail*. They were severe comments

upon his character and conduct as a clergyman, and charged him, on the faith of a report of the proceedings in a police court, with having criminal intercourse with a servant girl. On the trial the defendant pleading the truth, the girl was examined and testified to acts of immorality to warrant the imputation, but, her testimony being uncorroborated and denied by the plaintiff, the jury found the absence of other justification, and gave him a verdict for 2000*l.* damages (5 T. L. R. 542).

The case already referred to of *Dallas* v. *Ledger* is instructive. The plaintiff here was a theatrical manager, the defendant, the proprietor of the *Era*, and the libel was contained in some remarks made about employing young children on the stage, founded on a report of some police proceedings which were referred to, and the defence was that the comments were not false nor malicious, and were grounded on a report which was a fair, true and impartial report, published *bonâ fide* and without malice. The jury awarded plaintiff 40*s.* damages (Queen's Bench Division, March 21, 1888).

Appeals to the Public. A writer is justified in exposing the absurdity or fraud of any appeals to the public, always with the limitation that he does not pass the bounds of moderation and fairness which the occasion calls for (*Hunter* v. *Sharpe*, 4 F. & F. 983); as where a bogus cure for any complaint is advertised (*Morrison and another* v. *Harmer*, 3 Bing. N. C. 159; *Paris and Levy*, 9 C. B. N. S. 342; *Eastwood and Holmes*, 1 F. & F.; *Jenner and another* v. *Thomas & Beckett*, L. R. 7 Q. B. 11; *Hibbs* v. *Wilkinson*, 1 F. & F. 608). In *Waller* v. *Lock* (7 Q. B. D. 619) Cotton, L.J. said that "a duty of imperfect obligation attaches to every one to do what is good for society. In that sense

it is the duty of those who have knowledge as to persons seeking charitable relief to communicate it when asked by persons who wish to know what applicants are deserving objects."

And that the Court protects newspapers in showing up persons who advertise themselves as public benefactors and are mere frauds may be exemplified in a case, decided in March 1888, of *Ward* v. *The Newspaper Publishing Co. and O'Malley*. The libel was published in the *Star* newspaper, and contained in a letter written by a Mrs. Langworthy reflecting upon the conduct of plaintiff, and describing him as a swindler who advertised to provide an opening for destitute young ladies and did not do so, and represented himself as an ex-theatrical manager, which he was not. The defence was privilege and justification. It was pleaded that it was a comment on a matter of public interest, discussed fairly and temperately. Pollock, B., in addressing the jury, remarked that, if people challenged observation by advertising and putting forward schemes to the public, then the defendants would be justified in discussing them if they did so properly. "If the occasion was such a public one, and then privileged, was the language used more than was reasonably adequate for the occasion? Did it show a private malicious or spiteful motive, or did it exceed proper bounds so as to wound and give pain to individuals? Was this a fair and reasonable comment to warn people, or was it a private and malicious utterance of spite exceeding the true limits? But the defendants went further, and said they were not only entitled to publish the letter, but that every word they said was true. These were questions to be solved by the jury," &c. The jury found for the defendants on all these points, and judgment was entered accordingly for them.

And as to exposing advertising frauds may be cited the case of *Druiff* v. *Keeson and another.* The plaintiff, an optician, complained of published letters injuriously affecting him in his trade, implying that he traded without means, and relied on misrepresentations, was a swindler and a fraud. Defendants pleaded justification. On cross-examination the plaintiff admitted that the names of his firm were those of three young children, one aged six years. In his charge, Day, J., said "the defendants had taken a proper course, and were justified fully in exposing such fraudulent conduct, and the jury finding for defendants judgment was accordingly entered with costs (Queen's Bench Division, May 31st, 1888).

CHAPTER VII.

PUBLIC MEN AND PUBLIC MATTERS.

MATTERS of State and those concerned in them are open to criticism restricted within proper and reasonable limits. Those in such positions enjoy no special immunity, and "there is no sedition in censuring the servants of the Crown nor in just criticism on the administration of the law, nor in seeking redress of grievances, nor in the fair discussion of all party questions" (Fitzgerald, J., in *R.* v. *Parnell*, 14 Cox's C. C. 508). Thus in *Gibbons* v. *Wright* the plaintiff, an ex-judge in Jamaica, sued the publisher of the *Times* for a libel contained in a paragraph copied from the *Jamaica Times*, explaining his dispute with the Governor, and the circumstances of his resignation. The defendant pleaded fair comment on a matter of public interest, and traversed the imputation put on the words. The jury found for the defendant (Queen's Bench Division, Feb. 1888). The conduct of public servants or the policy of the Government may be criticised (*Parmiter* v. *Coupland*, 6 M. & W. 108; *Seymour* v. *Butterworth*, 3 F. & F. 376; *R.* v. *Sir R. Carden*, 5 Q. B. D. 1; *Wason* v. *Walter*, L. R. 4 Q. B. 73; *Dunne* v. *Anderson*, 3 Bing.), or any evidence by or of them given before a commission (*Mulkern* v. *Ward*, L. R. 13 Esp. 622; *Hedley* v. *Barlow*, 4 F. & F. 224), or evidence generally (*Henwood* v. *Harrison*, L. R. 7 C. P.), or their appointments (*Seymour* v. *Butterworth*, 3 F. & F.), or meeting of parliamentary supporters (*Davis* v. *Duncan*, L. R. 9 C. P. 396; *Duncombe* v. *Daniel*,

8 C. & P. 222), or the conduct of a member (*Harwood* v. *Sir J. Astley*, L. R. & P. N. R. 47; *Wisdom* v. *Brown*, 1 T. L. R. 412; *Pankhurst* v. *Hamilton*, 3 T. L. R. 500). The principle was early recognised by Lord Campbell, who traced the development of the right from its inchoate insecurity to its fairly settled condition now. "The full liberty," he says, "of public writers to comment on the conduct and motives of public men has only in recent times been recognised. Comments on Government, on ministers and officers of state, on members of both Houses of Parliament, on judges and other public functionaries, are now made every day which half a century ago would be the subject of actions or *ex officio* informations, and would have brought down fine and imprisonment on publishers and authors. Yet who can doubt that the public are gainers by the change, and that though injustice may often be done, and though public men may often have to smart under the keen sense of wrong inflicted by hostile criticism, the nation profits by public opinion being thus freely brought to bear on the discharge of public duties?" This privilege does not extend to and protect malicious writing. Parke, B., in *Parmiter* v. *Coupland* (6 M. & W. 108), said on this point:—"Every subject has a right to comment on those acts of public men which concern him as a subject of the realm if he does not make his comments a cloak for malice and slander. *Seymour* v. *Butterworth* (3 F. & F. 376); *Wason* v. *Walter* (L. R. Q. B. 73); *Dunne* v. *Anderson* (3 Bing. 88); *Headley* v. *Barlow* (4 F. & F. 224); *Henwood* v. *Harrison* (L. R. 7 C. P.), all deal with this aspect of the case. Cockburn, C.J., in *Campbell* v. *Spottiswoode* (3 B. & S. 777), while not assenting to the doctrine that the *bonâ fide* belief of a writer was any defence, held that where the conduct of a public man is open to ani-

madversion, and the writer who is commenting upon it makes imputations on his motives which arise fairly and legitimately out of his conduct, so that the jury shall say that the criticism was not only honest but also well founded, an action is not maintainable. But it is not because a public writer fancies that the conduct of a public man is open to the suspicion of dishonesty he is therefore justified in assailing his character as dishonest. In *Paris* v. *Levy* (2 F. & F. 71) Crompton, J. held that the jury were always to be judges if the limits of fair criticism were exceeded, and the rulings in the already oft-cited case of *Campbell* v. *Spottiswoode* and in *Turnbull* v. *Bird* (2 F. & F. 508) and *Lewis* v. *Levy* (E. B. & E.) were that where the matter was of public interest a writer in a newspaper has a right to comment on the subject provided the comment was not stronger than the occasion justified.

Rival editors, politicians, or pamphleteers, can with safety attack and vilify each other as such when they do not outstep the truth or infringe on the domain of private character and conduct (*Macleod* v. *Wakeley*, 3 C. & P. 311; *Odger* v. *Mortimer*, 28 L. T. 472; *Kienig* v. *Ritchie*, 3 F. & F. 413; *R.* v. *Veley*, 4 F. & F. 1117; *O'Donoghue* v. *Hussey*, Ir. R. 5 C. L. 124; *Duyer* v. *Esmonde*, 2 Ir. L. R. 243; *Murphy* v. *Halpin*, Ir. R. 8 C L. 127; *Davis* v. *Duncan*, L. R. 9 C. P. 396). One newspaper may safely charge another with being low and scurrilous, but *aliter* if it asserts that it is low in circulation for that statement as addressed to persons likely to advertise in that paper may have an injurious effect upon its circulation (*Heriot* v. *Stuart*, 1 Esp. 437; *Duncombe* v. *Daniell*, 8 C. & P. 222).

As to comments on places of public entertainment, concerts, readings, theatres, &c., the same rule holds, all *bonâ fide* criticisms or remarks are protected unless

they are unjust and malevolent (*Dibdin* v. *Swan*, 1 Esp. 28; *R.* v. *Ledger*, Times Jan. 80; *Green* v. *Chapman*, 4 B. N. C. 92; *Morrison* v. *Belcher*, 3 F. & F. 614; *Duplany* v. *Davis*, 3 T. L. R. 184; *Dallas* v. *Ledger* (see page 13); *Merivale* v. *Carson*, 3 T. L. R. 431).

The same rule also applies to tradesmen's advertisements (*Paris* v. *Levy*, 30 L. J. C. P. 1) and the prospectuses of public companies.

The working of public institutions, hospitals, asylums, colleges, schools, corporations, infirmaries, workhouses, gaols, and all such as depend upon the public rates or subscriptions, are fair subjects for public criticism, also boards of guardians, the meetings, proceedings and conduct of such, or county councils, or vestries, or grand juries, town commissioners, rural sanitary boards or urban sanitary boards, are all matters of public interest (*Purcell* v. *Sowler*, C. P. D. 218, 46 L. J.; *Harle* v. *Catherall*, 14 L. T. 801; *Shepherd* v. *Lloyd*; *Cox* v. *Feeny*, 4 F. & F. 13), but not the trustees of a private corporation (*Wilson* v. *Fitch*, 41 Cal. 363; *Kelly* v. *Tinling*, L. R. 1 Q. B. 699). Reports of the proceedings of all such bodies are protected under the 3rd section of the Act of 1888.

The distribution of subscribed money and public funds is a very fair and proper subject for newspaper criticism. Thus in the case of *Twyman* v. *Bligh* comments were made in a letter from a correspondent in the *Kent Coast Times* upon meetings held for Jubilee celebrations, and distrust expressed of certain persons. The plea that it was a matter of public interest how a fund subscribed to by the public should be controlled and allocated was pleaded, and the jury so found for the defendant (Queen's Bench Division, Jan. 25, 1888).

CHAPTER VIII.

A FAIR AND ACCURATE REPORT.

SECT. 2 of the Act of 1888 repeals the faulty and defective section of the Act of 1881, which ran thus:—"Any report published in any newspaper of the proceedings of a public meeting shall be privileged if such meeting was lawfully convened for a lawful purpose, and open to the public . . . and if the publication of the matter complained of was for the public benefit." A good deal of doubt at once arose as to what were matters for the "public benefit," and this was given expression to by Lord Bramwell in the case of *Ryalls* v. *Leader* (1 L. R. Ex. 296), and the overruling of a wise decision of Mr. Justice Grantham, who held that reporters should not be expected to discriminate in these matters, rendered the Act practically useless in this respect. In the case of *Pankhurst* v. *Sowler* (3 T. L. R. 193) its defects came glaringly into prominence. There an action was brought against the proprietor of a paper for reporting a speech in which blasphemy was imputed to the plaintiff. The learned judge had *not* left it to the jury whether the matter complained of was for the public benefit, and it was held on appeal that this was not under the Judicature Rules "a proper and complete direction" and a new trial was obtained. Huddleston, B. remarked, that the Act of 1881 was passed for the purpose of remedying what was considered to be a defect in the law arising out of *Purcell* v. *Sowler*, and it provided a protection for true reports of public

meetings published without malice and the publication of which was for the public benefit." It was conceded in the case that the meeting was for a lawful purpose, that the report was fair, and that it had been published without malice, but it was denied that such a report was for the public benefit. In the case of *Venables and another* v. *Fish and others* the same question arose—the words were admitted to be libellous, the meeting to have been a public one, and the report fair and without malice. Denman, J., in his summing up referred to the previous case of *Pankhurst* v. *Sowler* as the only reported one on the question, and left the question to the jury if such report was for the public benefit, and, they holding it was, he entered judgment for the defendants. (See *Kelly* v. *Sherlock*, L. R. 1 Q. B. 689; L. J. Q. 35 B. 209; *Purcell* v. *Sowler*, 2 C. P. D. 218; *Cox* v. *Feeny*, 4 F. & F. 13; *Weldon* v. *Johnson*, *Times*, 27 May, 1884, where the question was said, by Coleridge, C.J., to be for the jury to decide.)

Sections 3 and 4 of the Act of 1888 deal with reports which are held to be privileged. Under them the report must be "fair and accurate," and the legality of the report is made to depend upon the circumstance as to whether the meeting was open to the public or any newspaper reporter was admitted, the very same principle on which the Criminal Law Commissioners based their recommendations as to the legalising of law reports, with the additional collateral right of the public to be informed of the proceedings that took place. As to the Act giving any extension of the old common law right recognised by the courts, it is very doubtful if the amendments which cut down the privilege do not leave things as they were. The Court of Appeal held nearly a century ago, and it has been

recognised for a long time back, that reports of proceedings in any court of law if "substantially correct" are privileged, and it is questionable if the present Act has advanced a step beyond that. A report must according to it be "*accurate*," but it is to be presumed this will, according to the tenor of the old line of decisions, be held by the judges to be "substantially correct" or "fairly accurate." Unless this is held, considering the fact that no ordinary newspaper report published is ever absolutely accurate, serious injury may be done the proprietors of journals, and they will be made responsible for the mere acts of their reporters, thus in the case of the owners of newspapers contravening the ordinary principles of the law and making a man liable to have malice imputed to him for the acts or omissions of a servant, a principle at variance also with the law even as laid down so far back by Lord Coke, who said, malice implied a wilful, conscious and intentional publication of the libel; and as this does not apply to the reporter, who does not publish, how much less can it to the proprietor, who was not aware of the matter at all. The most important decisions dealing with this question of publication were in the cases of *Alexander* v. *N. E. Rail. Co.* (34 L. J. Q. B. 152: 11 Jur. N.S. 619); *Grynn* v. *S. E. R. Co.* (18 L. T. 738); *Biggs* v. *G. E. Ry. Co.* (16 W. R. 908); *Levy* v. *Lawson* (27 L. J. Q. B. 282); *Edwardes* v. *Bell and others* (1 Bing. 403); *Tighe* v. *Cooper* (7 E. & B. 639; L. J. 26 Q. B. 215; 3 Jur. N.S. 716).

As the 3rd and 4th clauses however are merely declaratory, they throw us back on the law as it existed previously to their enactment, and old cases cited, therefore, have not lost their force and applicability in the interpretation of the libel law as it now stands.

While, therefore, the words "fair and accurate" do not improve matters, certainly the remainder of the same clause 3 is equally misleading. "A contemporaneous report" is in a strict sense almost an impossibility, and even an evening paper will hardly fulfil the exact condition while certainly a weekly journal cannot. The meaning and intention is, however, plain, and the protection afforded outside the statute and by the common law may be considered sufficiently strong to deal with these cases.

Privileged Reports under the Act. By sect. 4 the reports of the proceedings of any "local authority established under any Act of Parliament" are privileged under the conditions set out, but if by any mischance the reporters are not invited to or allowed in, and the report is otherwise supplied, the protection does not extend. In the case of *Popham* v. *Piedburn* (7 H. & N. 891) it was decided that official reports before vestries and other similarly constituted bodies cannot with impunity be published before they are officially communicated to these bodies. Parliamentary Reports or Papers can be published under 3 & 4 Vict. c. 81, and evidence before a committee of either House (*Wason* v. *Walter*, *Edfferen* v. *Donnelly*, 6 Q. B. D. 30). Unless a court of inquiry is public, a report of its evidence is not protected (*Dawkins* v. *Paulet*, L. R 5 Q. B. 94), nor a military investigation (*Dawkins* v. *Rokeby*, 7 L. R. H. L. 744). These are the most remarkable exceptions. As the law stood on this matter before the Act of last session, protection was extended to a report of the proceedings of any meeting where the publisher could prove the following conditions existing: (i) That the meeting was a public meeting, (ii.) that it was lawfully convened; (iii.) that it was for a lawful purpose,

(iv.) that it was open to the public; (v.) that the report was fair and accurate; (vi.) that the report was published without malice; (vii.) that the publication of the matter complained of was for the public benefit; (viii.) and that, proving all the facts, the defendant lost his privilege if the plaintiff or prosecutor could show that the defendant refused to insert, in the newspaper in which the report containing the matter complained of appeared, a reasonable letter or statement of explanation or contradiction by or on behalf of such plaintiff or prosecutor." This clause of immunity was put to the test in the celebrated case of the *Manchester Courier* (*Pankhurst* v. *Sowler*, 3 T. L. R. 193). This journal happened to report the speech of a gentleman delivered at a public meeting during an election, and reflecting upon another gentleman who stood for a constituency 200 miles from Manchester. The judge held at the trial that no privilege could be claimed unless the jury found that such a report under such circumstances was for the public benefit. The newspaper suffered, and this grievance, exposing the nugatory nature of the protection afforded, called for immediate amendment, and was one of the determining causes of the Act of 1888. The clause now giving privilege to reports stands thus: "A fair and accurate report published in any newspaper of the proceedings of a public meeting or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a vestry, town council, school board, board of guardians, board or local authority formed or constituted under the provisions of any Act of Parliament or of any committee appointed by any of the above-mentioned bodies, or of any meeting of any commissioners authorised to act by Letters Patent, Act of Parliament, warrant under the Royal Sign Manual, or

other lawful warrant or authority, select committees of either House of Parliament, justices of the peace in quarter sessions assembled for administrative or deliberative purposes, and the publication at the request of any government office or department, officer of state, commissioner of police, or chief constable, of any notice or report issued by them for the information of the public, shall be privileged, unless it shall be proved that such report or publication was published or made maliciously: Provided that nothing in the section shall authorise the publication of any blasphemous or indecent matter: Provided also that the protection intended to be afforded by the section shall not be available as a defence in any proceedings if it shall be proved that the defendant has been requested to insert, in the newspaper in which the report or other publication complained of appeared, a reasonable letter or statement by way of contradiction or explanation of such report or other publication, and had refused or neglected to insert the same: Provided further that nothing in this section contained shall be deemed or construed to limit or abridge any privilege now by law existing, or to protect the publication of any matter not of public concern, and the publication of which is not for the public benefit. For the purposes of this section 'public meeting' shall mean any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance and discussion of any matter of public concern, whether the admission thereto be general or restricted."

A good deal of discussion is not unlikely to arise upon the change made by this clause, and the courts will not improbably be called on to decide what is meant by that rather vague phrase "a matter not of public concern," upon which the whole force of the clause

turns. The Act of 1881 required that the matter complained of should be for the "public benefit"; this is now changed to "public concern." No protection is afforded matter not for the public benefit and of public concern, yet it can hardly be for the public benefit if it does not concern the public, that is the people generally, the community at large, and this would certainly be deemed to apply to the inhabitants of a particular place as the ratepayers or parishioners. An opinion of eminent counsel has been already published in the *Times* of 11 Jan. 1889 to the effect that "it is impossible to give a very confident opinion as to the construction which will finally be put upon the clause; but on the whole it will probably be held that a fair and accurate report in a newspaper of the proceedings of any of the meetings specified is protected where either the matter is of public concern or the publication of which is for the public benefit. For the privilege is only taken away where the matter is not of public concern, or the publication of which is not for the public benefit, and if so it follows that where either it is of public concern or for the public benefit the privilege exists." How far this provision may be stretched depends largely upon the discretion of juries, and it can hardly ever be made to protect any scurrilous attacks on individuals or mere gross personalities which do not affect a man's public character and are not of public interest. It often happens that it is to the public interest that private matters concerning public men should be made known. The late Lord Chief Justice of England, for example, held that the personal conduct and character of a person in an official or judicial position might be of public interest or concern (*Seymour* v. *Butterworth*, Finlayson's Reports). Much ingenious newspaper controversy arose as to

some suggested difficulty about holding what constitutes a public meeting. Mr. Justice Stephen hinted in the *Times* that a few individuals might meet in a tap-room and constitute themselves severe critics upon public men, but no newspaper of respectability would allow such reports into its columns, and no jury could hold that such a gathering was a public meeting "*bonâ fide* and lawfully held for a lawful purpose." The remaining portion of the clause obviously refers to quasi or semi-public meetings, admission to which to prevent overcrowding, adverse demonstrations, or for other cause, is by ticket or order, and protects the reports of such, and it has been suggested that it may be furthermore held to mean those assemblages at private houses of a quasi-public character, called for a charitable or philanthropic object, where some discussion occurs; but, to protect any such report of such meetings, the representative or reporter of a newspaper must be present or have been asked to attend. The meetings of the shareholders of a company, of the subscribers to a charity, or the creditors of a bankrupt are not protected by the statute, and, if defamatory remarks at such are published, the paper must take the consequences, though of course, if the report is a fair and accurate one, that matter may be pleaded in mitigation. The other preceding portions of this important section not already noticed hardly call for any lengthened remarks, though a few words upon them are advisable. Cases may arise, but they are barely conceivable where a public meeting will be called for the purpose of uttering "obscene or indecent" language, or something defamatory, but, even if so, these meetings could not be held within the meaning of the Act to be "lawful," as is required. The possibility may occur that at a public meeting, otherwise irreproachable, words "obscene or indecent" may be used.

But for the proviso a report of such proceedings which did not contain such could hardly be considered accurate, so the authorisation to exclude them is not unnecessary. In the case of *Steele* v. *Brennan* (7 L. R. C. P. 261) it was held that if a full report of judicial proceedings would contain obscene matter, the obscene matter must be omitted, or the publisher will commit an offence. It is difficult to lay down a definition of what is obscenity, but the judgment of the late Lord Chief Justice Cockburn in *R.* v. *Hicklin* may be taken as sufficient:—"I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands the publication of the work may fall." As to blasphemous matter, the same proper stringency applies.

Respecting other kinds of reports, it was decided by the House of Lords in the case of *Fleming* v. *Norton* (1 H. L. C. 363) that the publication of a public document that is open for public inspection as a register of judgments or bills of sale is not libellous, but a recent case decided on another issue requires mention. Here the paper was held liable for publishing the entry in a County Court Register of a judgment against a person without setting out its date, on the presumption that at the time of its publication the judgment might have been satisfied. In regard to the reports of defamatory remarks made by speakers at a meeting, the aggrieved party may elect to proceed against the paper and not the slanderer, who may be a man of straw, for in publishing any such statements the paper adopts them and must be responsible for their accuracy. It is no defence to an action that another person uttered the slander, and it may be a circumstance of serious aggravation

if an oral statement made casually to men who may have known the contrary should be published in a newspaper. It may then become a grave libel.

A case of *Murray* v. *Wright*, before Denman, J. and a special jury, raised a point of some importance. The defendants published a cautionary notice respecting the plaintiff, and pleaded a denial of the allegations of the claim, and in particular did not admit that the words complained of were published of the plaintiff or concerning his business; further, that they were published *bonâ fide* and without malice, and for the public benefit and in the usual course of business as a public journalist, and were a fair and *bonâ fide* comment upon matters of public interest and concern, and finally that the words were true in substance and in fact. Pointing out that every little circumstance of the publication need not be true, the judge left the facts to the jury, and a farthing damages was awarded, for which he refused to certify costs (3 T. L. R. 16).

Sect. 4 of the Act of last session (1888) protects police publications absolutely, the words being: "the publication at the request ... of the commissioner of police or chief constable of any notice issued by them for the information of the public" (51 and 52 Vict., cap. 64).

Of course publishing the remarks of a speaker not made at a public meeting cannot be protected. A case recently came before the courts (*Dolly* v. *Newnes*, 3 T. L. R. 23) where an after-dinner speech, containing humorous but disparaging remarks upon the plaintiff, being made it was reported in *Tit Bits*, and the jury awarded damages. The defendant pleaded the truth of the statements and their republication from an American paper. Stephen, J., in summing up, said it was not a question of what was said at a dinner party,

but what was published in a public newspaper. "The way the press" (he meant presumably certain society journals, which no one wants to protect) "employed itself in the present day in collecting tit bits to stimulate the appetites of those who, having very little wit or knowledge themselves, liked to read what was said and done by those who had more, exercised a great restraint upon private life. When anything of the kind was published, a man had a right to say, 'I do not care what Mr. A. or B. said, but I do not choose to be made an object of ridicule, be it good-natured or otherwise, merely to amuse a number of people. A libel was a writing which had a tendency to hold a man up to ridicule," and this publication was such, and so found by the jury. The liberty of the press was never intended to be extended to such a prostitution of the privileges of the press as characterises certain publications.

That the protection afforded even by the Act of 1888 to a report of a public meeting is often illusory, was evidenced in some recent Irish cases. At the March assizes, 1889, in Belfast, the *Freeman's Journal Co.* was sued by Mr. Fitzgerald, a resident magistrate, for reporting a statement made about him as a magistrate to the effect that he was closeted with a policeman for hours before that policeman subsequently gave his evidence at a trial over which Mr. Fitzgerald presided, with the innuendo that he influenced or suborned the evidence. The speech was made by a member of Parliament to his constituents, and the words were his, and were so reported; the meeting was undoubtedly public and yet the jury found for 300*l.* damages. The same newspaper was cast in 250*l.* damages in another libel action at the suit of Captain Stokes, also an R.M. for reporting in a speech made by Mr. O'Brien, M.P., at a public

meeting held for a lawful purpose that he, Captain Stokes, was an "invincible magistrate," the innuendo put upon it by the plaintiff being that he was one of a murderous gang of that name. In both these cases a newspaper was heavily mulcted for reporting the speeches of public men concerning public functionaries, made upon matters of public interest, upon lawful occasions and at public meetings. The meetings did not however come under the excepted ones set out in the 3rd section of the Act of 1888.

A mistake often occurs in the heading of a paragraph or in an otherwise correct report or in a statement of facts subsequently amended. Thus, in *Farrell* v. *Martin*, a paragraph appeared in defendant's paper to the effect that the plaintiff went to gaol for twenty-eight days. This was the heading of a report of the proceedings at a police court whereat the plaintiff was, in default of paying wages sued for, sentenced to twenty-eight days' imprisonment, and in reply to the Bench he said "he would pay if he could," and the conclusion of the report of the two cases respecting two separate charges for wages was "the defendant went to gaol for twenty-eight days." Now, it turned out the money was paid, and that the alternative sentence was not imposed, and that the plaintiff did not go to gaol. An explanatory paragraph appeared subsequently. The jury found that the report was a correct and fair one, and returned a verdict for the defendant (Queen's Bench Division, Jan. 13, 1888). Also see *Marks* v. *Conservative Newspaper Co.* (3 T. L. R. 244).

And, in the case of *Shaw* v. *Collingridge*, the *City Press* published an incorrect report of an action tried at the Mayoralty Court, and was cited by plaintiff to answer for a libel in misrepresenting his evidence. A plea of its being a fair, impartial, and *bonâ fide* report of

the proceedings was put in, and the issue contested. The jury found for plaintiff for 20*l.* (Queen's Bench Division, Feb. 22, 1888).

In *Harris, M.P.* v. *Arnott* of *Irish Times*, tried at Limerick Assizes July 1889, for a verbal mistake in omitting 'not' from a report of the proceedings before the Special Commission the jury found for 1000*l.*—the omission represented plaintiff as swearing he was "an invincible."

A Judge's Judgment or Summing-up not Privileged.—One of the most important and authoritative decisions on a matter arising out of the Libel Acts was that of the Court of Appeal in *MacDougall* v. *Knight and another* (5 T. L. R. & W. N., April 13, 1889). It was previously held by the Court of Appeal in the same case that a report of a judge's summing-up was a fairly impartial report of a legal proceeding to entitle the publisher to immunity for publishing it; but a higher decision now establishes the contrary damaging doctrine; and, until the law is amended, it may be considered that a separate report of a judge's charge is not necessarily privileged. The case in question came before the House of Lords from the Court of Appeal from a decision affirming a judgment of the Divisional Court. The defendants pleaded that the plaintiff had brought charges against them in a Chancery suit, and that the pamphlet which they published of those proceedings, and which contained only the judgment, was a fair, accurate and honest report of what the judge stated in his judgment in that suit; but Huddleston, B., at the trial had left it to the jury to find: (1) whether the pamphlet in fact was a fair, honest and accurate report of the judgment; (2) whether it was published by the defend-

ants *bonâ fide* and with the honest intention of making known the true facts of the case, in order to protect their reputation and in reasonable self-defence; and (3) whether there was malice. The jury answered affirmatively all these questions. The plaintiff appealed on the ground of misdirection, but the judges of the Divisional Court held there was no misdirection. When the case came before the House of Lords, the Lord Chancellor in his judgment remarked that the judgment of a judge was not necessarily privileged, and a report in part of what took place in Court may be the exact reverse of what is intended by a report "that is putting a person who was not present in the exact position as regards all sides as if he were present." His most weighty remarks were: "If a judge's judgment or summing-up to a jury did not in fact give reasonable opportunities to the reader to form his own judgment as to what conclusions should be drawn from the evidence given, I think the publication of such partial and in that respect inaccurate representation of the evidence might be the subject of an action for libel to which the supposed privilege in what was said by a judge would be no answer. Nor do I think there is any presumption one way or the other as to whether a judge's judgment does or does not give such a complete and substantially accurate account of the matter upon which he is adjudicating as to bring it within the privilege. If it be so, it must be proved to be so by evidence, and certainly not inferred as a presumption of law. But in this case the learned judge was never asked to submit any such questions as are now insisted on to a jury." Bramwell, L.J., in the course of his remarks said the pamphlet was not a publication of all the circumstances of the case, and was done by the

defendants not as purveyors of news—not that newspapers had any peculiar privileges in that respect, except what was given them by statute—but in vindication of their character. They did not hold the publication of a judgment could not be the subject of a libel action. The plaintiff, however, had not succeeded, because the proper objection had not been taken at the trial, namely, that though the jury had found against the plaintiff on the facts, he was entitled to judgment because it had not been pleaded that the publication was a fair and accurate report, not of the learned judge's judgment, but of the proceedings at the trial. Fitzgerald, L.J., concurring, stated, *inter alia*, that a publisher incurred considerable risk in giving only the decision of the judge, and not the reasons of that decision; he may exceed the limits of privilege and leave himself open to the imputation that he had adopted the plan of a partial publication as the vehicle of malice. "The publication of the decision, preceded by the judge's summary of the case and the evidence with his own reasons comes *primâ facie* within the protection afforded to the publication of proceedings of a court of justice, and to obtain that protection it was not necessary to give all prior proceedings at the trial."

This weighty and important judgment at once destroys the absolute confidence which was felt in reproducing the judgment of a judge. All newspapers, in so doing, naturally presumed such a pronouncement was a well-balanced, impartial and substantially accurate reflex of the whole of the evidence on both sides and of the main features of the case. Now that such a presumption can no longer be safely indulged in, the law upon the subject is reduced to a condition of harassing doubt, perplexity and uncertainty; and newspapers are obliged to exercise the

greatest caution in this respect, and actually to sit in judgment on the very judges themselves, and exclude from their columns judicial charges or judgments which are not sufficiently exhaustive, impartial and complete—a condition of things, which for the public interest cannot very long be tolerated, as it will lead to the exclusion of all summarised reports from certain responsible newspapers, the exigencies of whose limited space preclude the possibility of their reporting with any fulness the entire evidence in a case, and who up to this satisfied themselves and their readers with a mere report of the judgment.

The importance of this decision will best be gathered from a brief review of the opinions held by the Court of Appeal in the same case when that body affirmed the decision of the Divisional Court as to the privilege attaching to the publication of a judgment. Lord Esher, in delivering the judgment of the Court of Appeal (*McDougall* v. *Knight & Son* (17 Q. B. D. 639), stated that since *Lewis* v. *Levy* (E. B. & E. 537) 27 L. J. Q. B. 282) public policy justifies the publication of the proceedings in a Court of Justice on the ground that the Court is open to the public, but cannot hold all the people who may wish to be present, and that it is for the public benefit that what takes place in Court should be made known to all. "If a fair report of any distinct part of a trial is published, the publication is justifiable, and therefore a fair report of the whole of one day's proceedings is privileged, even if the result is that it bears hardly on the character of an individual who may be in a position later on to answer all that is brought forward against him. In my opinion 'fair' is equivalent to fairly correct; whether a person's mind is fair is involved in the

question whether the publication is *bonâ fide*. The question of fairness arises only when the report is not *literatim et verbatim*. If it is so, no question can arise. Suppose the judgment is erroneous, still the persons who were not in Court but who read the report are put in the same position as those who were in Court and heard the judgment delivered. The responsibility for the accuracy of the judgment rests on the judge who delivers it, not on the person who publishes the report of it. The fact of the publication of a judgment in a pamphlet is not material. For a jury to be asked whether the summing-up of a judge, or his judgment in the case of which the report is published, is fair and accurate would be most mischievous, for it would tend to destroy the independence of judges." (The effect of the recent decision of the House of Lords is to do all that the learned Master of the Rolls considered mischievous, and to make reporters, or ultimately juries, judges of the impartiality of the judges' charges, a most unwelcome state of things for all parties interested). Bowen, L.J., in his decision in the case, concurred with Lord Esher, as did the rest of the Court, but added further, "that it is for the interest of the community that no restriction should be placed on the publication of what judges say in the course of proceedings in Courts of justice." He quoted and approved of Cockburn's, C.J., pronouncement in *Wason* v. *Walter* (L. R. 4 Q. B. 73), that "whatever the advantages attaching to a system of unwritten law—and of these we are fully sensible—it has at least the advantage of elasticity, and enables those who administer it to adapt it to the varying conditions of society and to the requirements and habits of the age in which we live, so as to avoid the inconsistencies and injustice which arise when the law is no longer in harmony

with the wants, and usages and interests of the generation to which it immediately applies. Our law of libel has in many respects only gradually developed itself into anything like a settled and satisfactory form. The full liberty of public writers to comment on the conduct and motives of public men has only in very recent times been recognised." It is not only true that no action will lie for the publication of a correct account of all that has passed, but the proposition must be extended so as to include the case of a fair summarised account. It is true that a report of a fragment may be published, as in *Lewis* v. *Levy* (1 E. B. & E. 537). "In case of a newspaper, the publication of proceedings from time to time without malice is undoubtedly privileged." Fry, L.J., also concurring, said the question was if the report published was a fair report of that part of the proceedings of which it purported to be a report, and "if it is so, in my opinion, it is *primâ facie* privileged." The law, as Lord Campbell said in *Lewis* v. *Levy* (*supra*), upon such subjects must bend to the approved usages of society, though still acting upon the same principle that what is hurtful and indicates malice should be punished, and that which is *bonâ fide* and beneficial should be protected (17 Q. B. D. 636).

From these weighty pronouncements of the law as it stood before the recent disastrous decision in the House of Lords, and its present unsatisfactory condition since their ruling, the necessity for an amendment, that will bring things back at least to their former position of qualified security, is evident, and no stronger reasons for the change could be suggested than are furnished in the remarks of Lord Esher as to the new and unsought for duty it casts upon editors to become the critics of judicial utterances.

CHAPTER IX.

SEDITIOUS, OBSCENE AND BLASPHEMOUS LIBELS, CRIMINAL INFORMATIONS.

"EVERY one," says Mr. Justice Stephen in his draft code, which, in the opinion of the Criminal Code Commission, states accurately the existing law, "commits a misdemeanour who publishes, verbally or otherwise, any words or any document with a seditious intention. If the matter so published consists of words spoken, the offence is called the speaking of seditious words. If the matter so published is contained in anything capable of being a libel, the offence is called the publication of a seditious libel." Art. 91.

"A seditious intention is an intention to bring into hatred or contempt or to excite disaffection against the person of Her Majesty, her heirs and successors, or the Government and Constitution of the United Kingdom as by law established, or either House of Parliament, or the administration of justice, or to excite Her Majesty's subjects to attempt, otherwise than by lawful means, the alteration of any matter in Church or State by law established, or to raise discontent or disaffection amongst Her Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of Her Majesty's subjects." Art. 92.

Of course an intention to effect a reformation of the constitution by lawful means, or to point out matters "which are producing or have a tendency to produce feelings of hatred and ill-will between different classes" is not a seditious intention.

"In determining whether the intention with which words were spoken, any document was published or any agreement was made, was or was not seditious, every person must be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself." Art. 94.

The law of seditious libel developed under the later Tudors and Stuarts, and was administered by the Star Chamber, punishing by fines and imprisonment. Coke mentions "two notable records" of earlier times." We have the 23 Eliz. c. 2, making it a felony to "devise, write, print, or set forth any book to the defamation of the Queen, &c." The conduct of Scroggs against unfortunate pressmen is well known. Most of these cases are detailed in the State Trials, and their frequency can be gauged by the fact that in the year 1684 alone there were sixteen trials for political libels (Luttrell's Diary, p. 125). The severity of the old law may be seen in the case of Sir Samuel Barnardiston for expressing his opinions in four private letters to a friend, and who was tried by Jeffreys (9 S. T. 1334). There the mere writing was enough to condemn him, apart from any guilty or malicious intention, to a fine of 10,000*l*. Next are the cases of Baxter, Francklin, Johnson and the seven bishops (S. T. pp. 1339 to 1350). A written censure of public men for their conduct as such and upon the laws and institutions of the country was, down to the later part of the eighteenth century, a proper definition of a seditious libel. Fox's Act introduced the element of intention. A masterly review of the law down to 1783 will be found in Lord Mansfield's judgment in the Dean of St. Asaph's case (21 S. T. 253), a most instructive and interesting epitome of the principal decisions.

Fox's Act. The notorious case of *R.* v. *Stockdale* (22 S. T. 292) led to the passing of Fox's Act—the first protective press enactment, passed the 32 Geo. 3, c. 60. It was entitled, "An act to remove doubts respecting the functions of juries in cases of libel;" and its principal provisions are: "Whereas doubts have arisen whether on the trial of an indictment or information for the making or publishing any libel where an issue or issues are joined between the king and the defendant or defendants on the plea of not guilty pleaded, it be competent to the jury impannelled to try the same to give their verdict upon the whole matter in issue; Be it therefore declared and enacted by the King's most excellent majesty, by and with the advice of the Lords spiritual and temporal and Commons in this present Parliament assembled, and by the authority of the same, that on every such trial the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter put in issue upon such indictment and information, and shall not be required or directed by the Court or judge before whom such indictment or information shall be tried to find the defendant or defendants guilty, merely on the proof of the publication by such defendant or defendants of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information. Provided always that on every such trial the Court or judge before whom such indictment or information shall be tried shall according to his or their discretion give their or his opinion and directions to the jury on the matter in issue between the king and the defendant or defendants in like manner as in other criminal cases."

It was also provided that the Act was not to interfere with the jury's right to find a special

verdict, or the defendant's right to move in arrest of judgment.

This Act, while silent as to the limits of the libel, did away with the injustice of previous decisions, that all that the jury could find was the mere fact of publication, but the part leaving it to the judge to direct if he so wished was abused (*R.* v. *Hone*, S. T.). Both in the cases of *R.* v. *Eaton* (22 S. T. 785), and of *R.* v. *Reeve* (26 S. T. 529), Lord Kenyon expressed no opinion to the jury. In the case of *R.* v. *Cuthill* the same learned lord described in these remarkable words the liberty of the press, a definition of rights which many may properly seek to have extended: "The liberty of the press is neither more nor less than this, that a man may publish anything which twelve of his countrymen think is not blameable, but that he ought to be punished if he publishes that which is blameable."

Lord Mansfield described the liberty of the press as the power of publishing without a license, subject to the law of libel. The most celebrated cases of political libel subsequently to the Act of 1792 were *R.* v. *Paine* (22 S. T. 318); *R.* v. *Frost* (*ibid.* 471); *R.* v. *Winterbotham* (*ibid.*); *R.* v. *Lambert*, *Perry* and *Gray* (of *Morning Chronicle* (22 S. T.), for publishing an advertisement); *R.* v. *John Reeve* (26 S. T. 529) (where the jury found the publication but not the motive charged). In all these and other cases of a similar character the jury were recognised as the judges of the facts of publication and intention. By the 60 Geo. 3 and 1 Geo. 4, c. 8, the Court on conviction was given the power to order all copies of the libel to be destroyed, and seditious libel was thus described: "Any seditious libel tending to bring into hatred or contempt the person of His Majesty, his heirs or successors or the regent or the government and constitu-

tion of the United Kingdom as by law established, or either House of Parliament, or to excite His Majesty's subjects to attempt the alteration of any matter in Church or State as by law established, otherwise than by lawful means." No change in the law has since taken place. The trials of Sir Francis Burdett (4 B. & A. 95), Cobbett's trial; *R.* v. *Carlile* (4 C. & P. 415) are the most interesting. By 6 & 7 Vict. c. 96, usually known as Lord Campbell's Act, it shall be competent for a defendant to plead the truth, and that it was for the public benefit it should be published as already pointed out.

Obscene Libels.

The fourth clause of the Act of 1888 takes away the protection otherwise allowed to a report if it contain any matter of a blasphemous or indecent character. An obscene libel "means an obscene or indecent book, paper, print, writing, picture, drawing, photograph, and suchlike representation." In *R.* v. *Hicklin*, Cockburn, C.J. laid down this test of obscenity: "I think the test of obscenity is this, whether the tendency of the matter charged is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall" (L. R. 3 Q. B. 360). Sometimes a publication of an indecent picture in a medical book may be justifiable, and some classical works would fare badly if the line were too tightly drawn. A picture, otherwise a work of art, might also come under the ban. In his "Digest of the Criminal Law" Mr. Justice Stephen (Art. 172) thus treats of the matter: "A person is justified in publishing obscene books, papers, writings, prints, pictures, drawings, and other representations if their

publication is for the public good as being necessary or advantageous to religion or morality, to the administration of justice, the pursuit of science, literature, or art, or other objects of general interest; but the justification ceases if the publication is made in such a manner, to such an extent, or under such circumstances as to exceed what the public good requires in regard to the particular matter published."

Thus, without going too minutely into details, certain medical books and drawings, while not only allowable but necessary for the purposes of professional instruction, are hardly permissible subjects for popular perusal, and, while their restricted publication in the first instance is to be allowed, their popularisation is certainly a matter for the interference of the police authorities. The provisions of the 14 & 15 Vict. c. 100, deal with these offences, and by s. 29 a person publishing an obscene libel may get two years' hard labour. Under the 20 & 21 Vict. c. 83, s. 1, any person may go before a magistrate or two justices of the peace and swear that he has reason to believe and does believe that obscene publications are kept in a place within the magistrate's "jurisdiction for the purposes of sale or distribution, exhibition for the purposes of gain, lending upon hire, or being otherwise published for purposes of gain, and that one or more articles of the kind have been sold," &c., at or in connection with such place, and thereupon the magistrate or justices, upon being satisfied that the complainant's belief is well founded, and being also satisfied that the articles are kept for any of the purposes aforesaid, are of such a character and description that the publication of them would be a misdemeanour, and proper to be prosecuted as such, give authority by special warrant to any police officer to enter such place and search for and

seize all such books, papers, &c., found there, and to carry them before the magistrate or justices, who shall thereupon issue a summons calling upon the occupier of the place to appear within seven days before the magistrate's Court, to show cause why the articles so seized should not be destroyed, and if the party summoned does not appear, or if he appears and the magistrate or justices are satisfied that such articles or any of them are of the character stated in the warrant and have been kept for the purposes aforesaid, he or they are to order them to be destroyed at the expiration of the time allowed for appealing, and in the mean time order them to be impounded. An appeal by sect. 4 to Quarter Sessions may be lodged within seven days, on entering into recognisances to pay costs. A form of the order and of the procedure will be found in *Ex parte Bradlaugh* (3 Q. B. D. 509; L. J. M. C. 107). The death of the complainant does not put an end to the proceedings, as was seen in *R.* v. *Truelove* (5 Q. B. D. 336).

If in an otherwise fair report of judicial proceedings obscene or indecent matter is published, the protection ordinarily extended to the report is withdrawn, and, although the difficulty may arise as to how a report with such an omission can be considered an accurate report at all, still its appearance is not justified (*Steele* v. *Brennan*, L. R. 7 C. P. 261). An inherent right lies in a judge to prohibit any report of the proceedings of his court, but it is a power the Bench is slow to exercise. The best course would be to forbid by law the report of any indecent or obscene matter.

The case of *R.* v. *Adams* (3 T. L. R. 85) raised some interesting points, the chief one being whether it was a criminal offence to send a young woman a letter with an improper proposal, though in fact it

does not reach her. There seemed by Hick's case (Palmer's Reports) some doubt, if a defamatory libel only reached the person defamed, whether it was a criminal offence. The first case of obscene and indecent libel reported was *R.* v. *Curl*, in Strange's Reports, and this was the case of a printed book. Then followed the case of *R.* v. *Wildes*, 4 Burrow's Reports and 18 S. T., where the books were printed but never actually published or allowed out of the house, yet the jury held the printing was a publishing. A libel may be published if indecent or defamatory, but not if it leads to a breach of the peace, and this seems to be the guiding distinction. In *R.* v. *Hicklin*
. B. D.) it was laid down that what was obscene
criminal, and in *R.* v. *Cruikshank*, in the Central
minal Court in May 1880, two men were convicted
indecent libel contained in a letter to a young
an accompanied by pictures of a gross character.
is judgment Coleridge, C.J., stated that the letter
ntained a defamatory libel tending to asperse the character of the person written to, and to bring her into contempt, and was calculated to provoke a breach of the peace. The sending of such a letter might probably provoke on her part or on that of her friends a breach of the peace. All that was necessary to sustain a conviction, therefore, was that there was a defamatory libel. Sect. 227 of the Criminal Code defined what such a libel was, and the case was argued in *R.* v. *Holbrook* (4 Q. B. D.).

In *Ex parte Bradlaugh* (3 Q. B. D. 509) it was decided that an order by a magistrate for the destruction of an obscene book under 20 & 21 Vict. c. 83, s. 1, is bad, if it merely sets out that the magistrate was satisfied the book was obscene, but not that he was satisfied that the publication of it would be a misdemeanour, and

proper to be prosecuted as such. It will be seen by this the care that is necessary to be observed before ordering the destruction of obscene books. As regards the indictment for such an offence, it was decided in *Bradlaugh and Besant* v. *The Queen* (3 Q. B. D. 607) that in an indictment for publishing an obscene book it is not sufficient to describe the book by its title only, but that the words and passages thereof alleged to be obscene must be set out, and if they are omitted the defect will not be cured by a verdict of guilty, and the indictment will be held bad either upon arrest of judgment or upon error. Such a defect is now cured by the 6th sect. of the Act of 1888 passed specially in consequence of this defect.

At the Old Bailey, on the 30th of May, 1889, Mr. H. Vizetelly, a bookseller, surrendered and pleaded guilty to an indictment charging him with selling translations of Zola's works. The Solicitor-General, who prosecuted, reminded the Court that the defendant pleaded guilty last October on a similar charge, and undertook not to continue the sale of any such books in future. He had broken that undertaking, and had advertised a reissue of the works after revision. All the objectionable matter was retained, and he asked that the defendant's recognisances should be estreated. The counsel for defendant, undertook that the sale of the works should be positively discontinued. The Recorder estreated the recognisances, 200*l.*, and sentenced the defendant to three months' imprisonment.

Blasphemous Libels.

Blasphemy is an offence specially recognised under the Libel Act, and, apart from the question of prosecutions for blasphemous libels, the third section of the Act of

1888 provides that no protection shall be afforded a report of any blasphemous matter. A blasphemous libel has been since the case of *R.* v. *Carlile* (3 B. & Ald. 161) recognised as an offence against the common law. In the case of denying the authenticity of the Scriptures, Abbott, C.J., and all the judges held with him that the defendant was guilty of a blasphemous libel (*R.* v. *Waddington*, 1 B. & C. 26), Best, J. stating "that a work denying the truth of Scriptures and published maliciously is by common law a libel." Denman, C.J., held that a publication tending to cast disgrace on or question the Old Testament was a libel (*R.* v. *Hetherington*, Folkard, 598, quoting 5 Jur. 529); and in *Cowan* v. *Melbourne*, Kelly, L.C.B. held that a person could justifiably evade a contract to let certain rooms because the plaintiff proposed to deliver in them lectures against the truths of religion (4 L. R. 2 Ex. 230). Bramwell, B., agreed with Chief Baron Kelly, laying down the doctrine that "blasphemy consists in the character of the matter published, and not the manner in which it is stated." A case of *R.* v. *Pooley*, tried before Coleridge, J. (3 Folkard's Starkie, p. 600), turns a good deal upon the principle "that a wilful intention to pervert, insult, and mislead others by means of licentious and contumelious abuse applied to sacred objects, or by wilful misrepresentations or artful sophistry calculated to mislead the ignorant and unwary, is the criterion and test of guilt. A malicious and mischievous intention, or what is equivalent to such an intention in law, as well as morals, a state of apathy and indifference to the interests of society, is the broad boundary between right and wrong." In the opinion of Mr. Justice Stephen, this principle of Starkie was that adopted in the case of Pooley.

In the case of *R.* v. *Ramsay and Foote* (15 Cox's C. C. 35), Coleridge, C.J., held that the mere denial of the truth of the Christian religion or of the Scriptures was not enough *per se* to constitute such a writing a blasphemous libel, so as to render the writer or publisher indictable. But "indecent or offensive attacks on Christianity or the Scriptures, or sacred persons or objects, when such attacks are calculated to outrage the feelings of the general body of the community, do constitute the offence of blasphemy, and render the writer or publisher, or both, liable at common law to a criminal prosecution." The punishment for a blasphemous libel is fine and imprisonment, and under 9 & 10 Wm. 3, c. 2, a conviction brings with it incapacity to hold or enjoy any ecclesiastical, civil, or military office or employment. If on an indictment of several persons jointly for publishing a blasphemous libel in a paper it turns out that two of them who are respectively editor and publisher, had been already convicted on a charge of publishing similar libels in another number of the paper, the third party, whose defence is that he is not connected with the paper, can, upon his application, be tried separately, as his trial with the others might possibly prejudice his defence, especially if he desires to call them as witnesses. He can call them as witnesses on his behalf, *R.* v. *Bradlaugh* (15 Cox's C. C.). Here it was also ruled that discussing the truths of religion in an argumentative, decorous manner is not a subject for a criminal prosecution, but that, if the language is offensive, indecent, or shocking, it properly is.

Sects. 4, 7, 8, 9, of the Libel Act of 1888 deal with some changes in criminal procedure of much importance, and had better be referred to (see *infra*).

Principal cases on subject: *Maitland* v. *Goluey, Cam-*

pagnon v. *Martin* (2 East, 434), where Laurence, J. held any variation was fatal; *Walters* v. *Mace* (2 B. & Ald. 756); *R.* v. *Carlile* (3 B. & Ald. 161); *R.* v. *Waddington* (1 B. & C. 26), dealing with imprisonment. The statutes are 1 Ed. 6, c. 1; 1 Eliz. and 12 Eliz.; 3 James 1, c. 21; 9 & 10 Wm. 3, c. 32 s. 1; 53 Geo. 3, c. 160.

CRIMINAL INFORMATIONS—WHEN GRANTED.

In *R.* v. *Labouchere* (12 Q. B. D. 320) upon an application for leave to file a criminal information in respect of a libel upon a deceased nobleman made by his representative who was not resident in this country, it was held that the Court, in the exercise of its discretion, must reject the application, for the rule to be collected from modern decisions is that a criminal information can only be granted at the suit of a person who is in some public office or public position, and not at the suit of private individuals, who have their remedy by private actions. In this same case another important principle was established, that the application being from a person not residing in the country was in itself a strong reason for rejecting it, and, further, that an application for a criminal information for a libel upon a deceased person made by his representative will not be granted. The judgment of Coleridge, C.J., is worthy of some notice. Delivering the united decisions of Denman, Field, Hawkins, Mathew, JJ., he agreed with and endorsed the opinion of Kenyon, C.J., in *R.* v. *Topham* (4 T. R. 126) that the Court should not grant an extraordinary remedy, nor should a grand jury find an indictment unless the offence be of such signal enormity that it may reasonably be construed to have

a tendency to disturb the peace and harmony of the community, where, in such a case, the public are justly placed in the character of an offended prosecutor to vindicate the common right of all, though violated only in the person of an individual for the malicious publication of even truth itself (this was before truth could be pleaded). In *R.* v. *Critchley* (4 T. R. 139); *R.* v. *Paine* (Carth. 405); *R.* v. *Topham* (*supra*), the Courts inclined to favour the principle, that private character was alone to be vindicated and protected by the machinery of private actions. In *R.* v. *Mead* (4 Jur. 1014) the necessity for the person aspersed himself making the application was laid down clearly. Cases bearing on subject are *R.* v. *Kynnersley* (1 W. Bl. 294), where Lord Clanricarde sought to restrain a newspaper from giving a ludicrous account of his appearance with an actress; *R.* v. *Epps* (T. T. 1831); *R.* v. *Rintoul* (T. T. 1831); *R.* v. *Smith* (M. T. 1831); *R.* v. *Gregory* (8 Ad. & E. 907); *R.* v. *Latimer* (15 Q. B. 1077). Of fifty cases from 1860 to 1880 of such applications, only four were from persons not in prominent public positions. In *R.* v. *Lord Winchelsea*, Lord Blackburn said that the remedy had usually and properly been confined to cases of magistrates, ministers, public officers, and persons in high position, whose character was of such public importance as to require immediate vindication, and in *R.* v. *Heedley* he reiterated the same principle. All these decisions seem grounded on that excellent exposition of the law contained in Blackstone, book iv. c. 23, p. 200, where he says: "The objects of the other species of information filed by the Master of the Crown Office upon the complaint or relation of a private subject are any gross and notorious misdemeanours, riots, batteries, libels, and other immoralities, of an atrocious kind not peculiarly

tending to disturb the Government (for these are left to the care of the Attorney-General) but which on account of their magnitude or pernicious example deserve the most public animadversion." In *Yates* v. *The Queen* (14 Q. B. D. 1) it was ruled by the Court of Appeal that "criminal prosecutions" under the Newspaper Libel Act of 1881 included prosecution by indictment, by criminal information, and by applications before a magistrate, but that they are not words which are generally used to describe proceedings by criminal information, as such could not be filed *ex officio* unless the Attorney-General was of opinion that the matter was of that importance to proceed in that way. For an application for an information by a private person the prosecutor must bring into Court the libel and an affidavit that he is innocent of what is charged against him in the libel, and then only a rule *nisi* is granted, and the alleged libeller has an opportunity before the rule is made absolute of giving his explanation, and the reasons, if any, why the proceeding by information should not be allowed. And in the case of *ex officio* information there is this additional protection that there is the responsibility of the highest officer of the law, the Attorney-General, that the case was fit for being proceeded against by criminal information. In *R.* v. *Labouchere* (*supra*) Lord Denman went so far as to express an opinion that if a newspaper or an individual were to shew by repeated attacks or wide circulation of those attacks upon a private individual, whether a subject or a foreigner, a persistent determination to persecute, "he thought it the duty of the Court to protect the individual by making the rule absolute." In *R.* v. *Allison* (L. T. vol. lxxiv. p. 109), it was held by the Court of Crown Cases Reserved, that the fiat of the Attorney-General should mention the

names of the persons against whom the prosecution is authorised to be instituted sufficiently to identify them. Where, therefore, an editor and manager of a paper had been convicted upon an indictment for unlawfully writing and publishing a libel in such paper, but the fiat omitted their names, merely authorising the prosecution of the publisher, editor, and printer of such a paper, it was held that the defect was bad and that the fiat should specifically mention the names of the persons. The recent Act of 1888, of course, does away with the necessity of requiring the fiat, and substitutes instead an order of a judge. It was ruled in *R.* v. *Judd* (37 W. R. 193), where a limited company had printed a newspaper containing a libel, for another company which published the same, that in the absence of knowledge of the contents the directors of the former company and the signatories to the articles of association of the latter were wrongly connected; also, that the fiat of the Attorney-General against "the editor" without naming him was bad. In *Ex parte Littleton* (52 J. P. 264) it was ruled in a criminal information against a person who accused a postmistress of opening letters and tampering with them, that there may be special circumstances to entitle her to that remedy, but that the proper course was by indictment, and the Court refused the information. In *R.* v. *Holbrook* an application was made for a criminal information against the defendants for a libel published in a paper of which they were proprietors but the control of which they had handed over to a responsible editor, who managed entirely "the literary department" while others had the general management. The libel was inserted without the knowledge, consent, and against the express authority of the defendants. The judge at the trial directed a

verdict of guilty. On appeal it was held by Cockburn, C.J., and Lush, J, that there should be a new trial, for upon the true construction of the 6th & 7th Vict. c. 96, the libel was published without the knowledge, consent, or authority of the defendant, and it was for the jury to decide if the publication arose from want of due caution and care on his part (3 Q. B. D. 63).

CHAPTER X.

LORD CAMPBELL'S ACT—APOLOGY—PROVINCE OF A JUDGE—NEW TRIAL—REMITTAL TO COUNTY COURT—EFFECT OF A VERDICT FOR NOMINAL DAMAGES.

THE advantages which this Act confers upon newspaper proprietors are already well known and appreciated, and have been found a just and necessary protection to the independent and proper exercise of the difficult and delicate duties of journalism. The full text of this important statute (6 & 7 Vict. c. 96) will be found in the Appendix, and by its perusal it will be seen that several salutary defences can be pleaded under it. The truth of the matter charged can be pleaded on an indictment or information for a defamatory libel, and also "that it was for the public benefit that the said matters charged should be published." In recognition of a well-known principle of jurisprudence when on a trial for libel, evidence has been given which establishes a *primâ facie* case of publication against the defendant by the act of any other person by his authority, it shall also be competent to the defendant to prove that the publication was made without his authority, consent, or knowledge, and that the publication did not arise from want of due care or caution on his part. Some difficulties occur under the Act—for example, the expression "defamatory libel" had no ascertained meaning before the Act was passed, and in *R.* v. *Duffy* (2 Cox's C. C. 48) it was held not to include seditious or blasphemous libels, and yet a

seditious libel may be defamatory. Then in sect. 2, dealing with matters for the public benefit, the Act omits to say that the defendant may be acquitted if he proves all he is required to prove, and in sect. 4, providing that any one is liable to two years' imprisonment for maliciously publishing a defamatory libel knowing it to be false; if indicted under it he can prove the truth of the matter charged by way of showing that he could not know it to be false, the proviso in sect. 2 is too narrow, and if he cannot it is difficult to see how any one can ever be convicted of such an offence as publishing a libel knowing it to be false, for it would be monstrous to suggest that the prosecutor might show that the defendant knew the libel to be false by giving evidence of its falsehood, and of his knowledge of it, and that the defendant might not contradict him. And sect. 7, allowing an answer to a presumptive case of publication, does not add whether such proof is to entitle a person to an acquittal, or to go in mitigation of punishment. These are some of the objections found with the characteristic clumsy drafting of the Act, and are clearly pointed out by Mr. Justice Stephen in the second volume of his valuable "History of the Criminal Law," cap. 24, p. 385.

The 7th sect. of the Act has been held to apply to a case where two persons were tried on an indictment for publishing blasphemous libels in a certain print on which their names were given, one as printer, the other as the publisher thereof. Proof of their identity with the persons so mentioned in the newspaper, or any evidence merely connecting them with the paper, was held not to be sufficient to fix their liability under the section, and evidence was required that they published the libels, and not merely the newspapers in which the libels were printed (*R.* v. *Ramsay and Foote*, 15 Cox's

C. C. 35). Further, it was held in the same case that evidence that one of the parties published the paper was sufficient *primâ facie* evidence as against him without any express evidence that he knew of the libels, but express evidence as to the other party that he was editor was not held sufficient without proof that he directed the insertion of the libels (*ibid.*). Where in a case three persons were tried for publishing a blasphemous libel, the provisions of sect. 7 as to allowing exculpatory evidence in answer to a *primâ facie* case of liability for publication being quite general in its terms was held to apply to a prosecution for the publication of a blasphemous libel. The defendant having originally published the paper, and having, after he ceased to be ostensibly connected with it continued to allow it, knowing its character, to be published on his premises by persons in his employment, it was held that there was a *primâ facie* case against him, but yet that he had a fair defence under this Act (*ibid.*).

A general authority by a proprietor or publisher to an editor to conduct a paper, in the absence of anything to give it a different character, must be taken to mean an authority to conduct it according to law. The employment of an untrustworthy or incompetent person as editor, or of one with a previous reputation for libelling, or the total omission to look after the conduct of the paper under such, or the omission to require that articles of a doubtful character should be submitted to a competent person for revision before their publication, may all be deemed sufficient to disentitle a proprietor to claim the protection of the statute. It is only on the criminal responsibility that such a limit is put, as the proprietor is liable civilly for whatever appears in his paper, howsoever it came to be inserted, not on the

presumption of authority, as in the other case, but according to the maxim "respondeat superior," and on grounds of public policy and general convenience (*R.* v. *Holbrook*, 14 Cox's C. C.).

By sect. 5 of the Act, any person guilty of publishing a defamatory libel shall be liable to fine and imprisonment not exceeding one year. By sect. 4, if any person do so "knowing same to be false," he shall be liable to any term not exceeding two years. In *Boaler* v. *The Queen* (22 Q. B. D. 284) it was ruled that on an indictment for publishing a defamatory libel, "knowing same to be false," defendant may be convicted of merely publishing a defamatory libel. In *R.* v. *Carden* (5 Q. B. D. 1), upon an information for maliciously publishing a defamatory libel under the 5th sect. of the Act, and also in an Irish case, *Ex parte O'Brien* (14 Cox's C. C. 419) following *R.* v. *Duffy* (9 Ir. R. 329), the magistrate had no jurisdiction, it was held, to receive evidence of the truth of the libel, inasmuch as his function was merely to determine whether there was such a *primâ facie* case made out against the accused as should warrant him in sending him forward for trial. It was the law that a defence of the truth of the libel could only be inquired into at the trial upon a special plea framed in accordance with the terms of 6th section (*Ex parte Ellissen* (Folkard's Libel) and *R.* v. *Townsend*, 4 F. & F. 1089). It was in consequence of the injustice wrought by this decision of *R.* v. *Carden* that the third section of the Act of 1881 was passed (see *infra*).

In an indictment for libel in *R.* v. *Felbermann* (5 J. P. 168) framed under sects. 4 & 5 of 6 & 7 Vict. c. 96, whereas defendant was only committed under sect. 5 of that Act, the Judge (Mr. Justice Hawkins) refused to quash the indictment, but quashed as

much of it as purported to charge defendant under sect. 4.

In *R.* v. *Sullivan*, before the Irish Exchequer Division in Nov. 1887, Palles, C.B., gave the judgment of the Court upon a stated case, holding among other things (the respondent being proprietor of the *Nation* newspaper, and prosecuted under 50 & 51 Vict. c. 20, for having unlawfully published, with a view to promoting the objects of the Irish National League, a notice of the proceedings of that association, at a meeting of such body within a district specified where the association was suppressed), that the written statements made in the paper of which he was owner and publisher may be deemed to be his statements, and were, uncorroborated, received as evidence against him and may be treated as voluntary confessions, following the decisions in *R.* v. *Lamb* (2 Leach's Crown Cases, 554; 16 Cox's C. C. 347), and *R.* v. *Unkles* (Ir. R. 8 C. L. 50).

By sect. 1 of the Act provision is made for the offering and making of an apology before the commencement of an action or as soon afterwards as possible, and that such a plea can upon notice be pleaded (Form given in Chit. Forms, 10 ed. 844, and Bullen and Leak, 6 ed. p. 726). By sect. 2 money may be paid into Court and such payment pleaded. The payment is conditional upon the plea being proved, and if the plea is not proved the defendant is entitled only to the damages found by the jury (*Lafone* v. *Smith*, 4 H. & N. 158, 28 L. J. Ex. 33), who are to assess the damages irrespectively of the amount paid into Court, and are not to consider the payment into Court as an admission of liability to that amount (*Jones* v. *Mackie*, L. R. 3 Ex. 1; 37 L. J. Ex. 1).

Thus in *Hawkesley* v. *Bradshaw* (5 Q. B. D. 302)

where the defendant admitted the publication of an alleged libel, but pleaded that with the exception of the innuendoes set out in the statement of claim the libel was true, and in the alternative pleaded the insertion of a full apology in the newspaper under 6 & 7 Vict. c. 96, and also the payment of 40*s.* into Court, it was held by the Court of Appeal, overruling the judgment of Queen's Bench Division, that the offering of an apology and payment into Court and of a justification could be pleaded together, Bramwell, L.J., holding that a plea of payment into Court can be pleaded with a plea of justification, as it did not prejudice or embarrass the plaintiff.

Much discussion arises as to the utility, timeliness, and validity of an apology or retraction. Where it is considered advisable or expedient to publish such, it should be speedy, complete, fair and honest, not too weighted or watered down with qualifications or reservations, else it may defeat its object. It should also be published in the same part of the paper the libel appeared in, with the same circumstances of prominence and publicity. The statute chiefly regulating the procedure is Lord Campbell's Act (6 & 7 Vict. c. 96), sects. 1 and 2.

The leading cases as to the sufficiency of an apology and the timeliness thereof are *Chadwick* v. *Herapath* (3 C. B. 885), *Ravenhill* v. *Upcott* (33 J. P. 299), *Risk Allah Bey* v. *Johnstone* (18 L. T. 620).

As to an apology being pleaded in mitigation, the principal case is *Smith* v. *Harrison* (1 F. & F. 565).

Under Order of Judicature Act, money may be paid into Court, and pleaded in defence if before delivery, and no other defence can in such a case be pleaded. The words of sect. 2 of 6 & 7 Vict. are often pleaded, and are that "the libel was inserted in such newspaper

or other periodical without actual malice and without gross negligence, and that, before the commencement of the action or at the earliest opportunity afterwards, defendant inserted in such newspaper or other periodical a full apology for said libel; Or, if the newspaper or periodical publication in which said libel appeared should be ordinarily published at intervals exceeding one week, had offered to publish the said apology in any newspaper or periodical publication to be selected by the plaintiff to such action, and to such plea to such action it shall be competent to the plaintiff to reply generally, denying the whole of such plea." By sect. 1, in an action for defamation it shall be lawful for the defendant to plead in mitigation of damages that after notice in writing he made or offered an apology. Bramwell, L.J., in *Purcell* v. *Sowler* remarked that the only exceptional privilege which newspapers had over ordinary persons in libel actions was that under 6 & 7 Vict. they could pay money into Court and apologise. In *Peters and another* v. *Edwards and another*, it was held that in order to negative the presumption of negligence it was incumbent on the defendant to show how the mistake was made (3 T. L. R. 423.)

Following the lines of Lord Campbell's Act, the fourth clause of the Act of 1888 provides that no defendant can claim protection under the Act if he refuse to insert in the newspaper a statement by way of explanation or contradiction of the report complained of. This is so far as it goes a wise and proper provision and protection, but it does not go far enough, for it only protects *reports* of public meetings (not of judicial proceedings, which are left to the old law requiring payment into Court and disproof of negligence). The privilege should be extended to all kinds of libels, and to all kinds of reports inserted through

mere inadvertence, following the wise principle laid down in the report of the Committee of the House of Lords so far back as 1843, where the risks of newspaper proprietors were very fairly represented in these words: "The conductors of respectable journals stated to the Committee that notwithstanding the greatest caution they sometimes insert an objectionable paragraph; that in such cases respectable persons were willing to accept an ample apology, but that swindlers would not, and that their attorneys forced on the trial for sake of costs;" and the Criminal Law Commissioners stated, "It very frequently happens that the editor or publisher of a newspaper may through inadvertence without malicious motive publish libellous matter. The injurious character of the libel may frequently depend on circumstances to which he is an entire stranger. In such cases it is obviously politic that the real author of the calumny should be made responsible for his misconduct, and that the instrument of publication against which no charge of personal malice or ill-will is made should not be amenable." This is but a representation of the bare equities of the case, yet both legislation and judicial decisions have yet fallen short of establishing this plain recognition of right in a newspaper proprietor which is conceded in the case of every other person. The clauses dealing with apologies are but a concession of part of the right which should be clearly acknowledged, that only for a wilful and deliberate act of publication or positive neglect should the proprietor of a paper be made liable, and that it should be competent to him as a defendant in a suit when a presumptive case of publication by an agent has been made to show that the act complained of was under circumstances where he could not be supposed to have directed or sanctioned it,

and proof should be given that he was privy to the publication of the libel. As it is, an innocent proprietor may, except under the protection afforded by recent Acts, suffer for the malicious conduct of a reporter or correspondent who himself cannot be made amenable.

It has been held as already stated by the Court that the insertion of an apology must be as near as possible in the same size and style of type, and accorded the same position and prominence in the paper as the original libel. As explained in the case of *Lafone* v. *Smith* (27 L. J. Ex. 33) "the word apology whether it is full apology or apology alone means inserted so that it may operate as an apology, and putting it in small type is not enough. The place where it is put and the mode in which it is inserted as well as the terms in which it is couched are all matters for the jury to consider." Bramwell, B., further held in the same case that an apology meant an "effectual apology" likely to counteract the effect of the previous mischievous statement, and it could not mean a paragraph inserted in an out-of-the-way or unlooked-for corner of the paper, and Watson, B., thought the apology should appear in the same part of the paper that the libel was published in.

The publication of an apology may often lead to no practical result and be ineffectual and insufficient. Thus in a recent case of *Brown* v. *McFarlane*, which was a Scotch case against the proprietor of *Scottish Leader* for a libel contained in a paragraph reflecting upon plaintiff, and stating that he and his sons organised outrages for the Loyal and Patriotic Society, there was a contradiction of the report and an apology therefor published, but the jury found for the plaintiff in 200*l*., and one farthing each for his two sons (Court of Western Edinburgh, Dec. 1888).

The Province of the Judge at the Trial.—The judge is not bound to state to the jury as a matter of law whether a certain alleged libellous publication is a libel or not. His province and prerogative are simply to define what the law understands by a libel, and leave it to the jury to determine if the offence fall within that definition, and as incidental to that whether it is calculated or not in their opinion to injure the plaintiff (*Parmiter* v. *Coupland*, 6 M. & W. 105). The 32 Geo. 3, c. 60, s. 1, enacts that on trials for libel the jury may find a general verdict of guilty or not guilty upon the whole matter put in issue, and shall not be required or directed by the Court or judge to find the defendant merely guilty on proof of the publication by defendant of the paper charged to be a libel and of the sense ascribed to the same; and sect. 2 states that a judge shall, according to his discretion, give his opinion and direction on the matter in issue to the jury (*Bayliss* v. *Laurence*, 11 Ad. & E.), who may find a special verdict (sec. 3). The usual course in trials for libel since the passing of the statute is first for the judge to give a legal definition of the offence of libel and then leave it to the jury to say whether the facts necessary to constitute that offence are proved to their satisfaction, and this is the common practice whether the libel is the subject of a criminal prosecution or of a civil action. The judge as a matter of advice to them in deciding the question may give his own opinion as to the nature of the publication, but he is not bound to do so as a matter of law (*Parmiter* v. *Coupland*, 6 M. & W. 108; *R.* v. *Watson*, 2 T. R. 106). It is the duty of the judge to say whether a publication is capable of the meaning ascribed to it, but whether the judge is satisfied of that or not it must be left to the jury to say whether the publication has that libellous

or defamatory meaning or not (*Sturt* v. *Blagg*, 10 Q. B. 907).

In a well-considered judgment in that case Wilde, C.J., remarks that:—"It is the duty of the judge to say whether a publication is capable of the meaning ascribed to it by an innuendo; but when the judge is satisfied of that it must be left to the jury to say whether the publication has the meaning so ascribed to it." If the judge "taking into account the manner and occasion of the publication, and all other facts which are properly in evidence, is not satisfied that the words are capable of the meaning ascribed to them then it is not his duty to leave the question raised by the innuendo to the jury." In deciding on the question whether the words are capable of that meaning he ought not in my opinion (says Selborne, L.C., in the celebrated case of the *Capital & Counties Bank* v. *Henty & Sons* (7 H. L. C. 749) to take into account any mere conjectures which a person reading the document might possibly form as to some of the various motives and reasons which might have actuated the writer, unless there is something in the document itself and in other facts properly in evidence, which to a reasonable mind would suggest as implied in the publication those particular motives or reasons. The test according to the authorities is whether under the circumstances in which the libel was published, reasonable men to whom the publication was made would be likely to understand it in a libellous sense. Rumours or any consequences which they may have had could not properly be left to the jury as evidence tending to give a libellous meaning to a document if it were not otherwise proved to be a libel. Cases on the respective provinces of court and jury are principally the following:—*Woolnoth* v. *Meadows* (5 East, 463);

Woods v. *Brown* (6 Taunt. 169); *Wright* v. *Clements* (3 B. & Ald. 503); *Goldstein* v. *Foss* (6 B. & C. 154); *Hearne* v. *Stowell* (12 A. & E. 719); *Capel* v. *Jones* (4 C. B. 259). As to the duty of the Court to decide if the words are libellous, besides *Parmiter* v. *Coupland* (*supra*), *Sturt* v. *Blagg* (*supra*), *Mulligan* v. *Cole* (L. R. 10 Q. B. 549), may be consulted. In *Watkin* v. *Hall* (L. R. 3 Q. B. 396) a judge, it was ruled, ought not to withdraw a case from the jury unless he is satisfied the words are incapable of the meaning averred (*Cox* v. *Lee*, L. R. 4 Ex. 284; *Hart* v. *Wall*, 2 C. P. D. 146).

Arrest of Judgment. From Fox's Act a defendant could not be convicted of libel if the jury before whom the issue was tried did not hold that the tendency of the publication was libellous, and the defendant though still found guilty by a jury could obtain the opinion of the Court upon a question of law. If the defendant can get either the jury or the judge in his favour he will succeed, and the prosecutor or plaintiff will fail unless both are in his favour. The Common Law Procedure Act, sect. 61, did a good deal to remove the difficulties a plaintiff had in putting a cause on the record with sufficient technical precision. But while it did so it did not deprive him of his right to appeal to the Court to rule if the words alleged to be a libel or actionable slander though so found to be such by a jury were so in the opinion of the Court. A defendant by that provision has lost the old right of moving the arrest of judgment, for the materials on which the question whether the words written or spoken were used in a defamatory sense has to be decided are no longer on the record. But when the proof is complete, and all that can be properly found on that proof in favour of the plaintiff is found for him, the Court

(according to the opinion of Blackburn, L.J., in the case of the *Capital and Counties Bank* v. *Henty and Sons*, (7 H. L. C. 741) have exactly the same power that they had before, and if they are of opinion that if all which could be found had been put on the record under the old system, the judgment would have been arrested, they should give judgment for the defendant (see *Mulligan* v. *Cole*, 10 Q. B. 549). Thus we see in *Adams* v. *Coleridge* (*supra*), although the jury found for plaintiff for 3,000*l*., the judge refused to accept the verdict as being against the weight of evidence, and entered judgment for the defendant.

A New Trial.—If the judge in his charge to the jury should happen to tell the jury that the matter under controversy was libellous and that it was not, the verdict can be set aside on the ground of misdirection (*Hearne* v. *Stowell*, 12 Ad. & E. 731). There Denman, J., held the Court were bound to grant a new trial on the ground of misdirection. If the jury award excessive damages a new trial may be sought (*Clanricarde* v. *Joyce*, Irish Court of Appeal, Jan. 1888). And if the jury find that a certain publication, on the face of it libellous, is not so, this verdict for the defendant may be set aside and a new trial obtained (*Hunt* v. *Goodlake*, 43 L. J. C. P.). These are some of the principal grounds for moving to set aside a verdict in a libel or slander action, and need only be incidentally and briefly referred to. Within four days of the termination of the trial the party aggrieved with the verdict must serve notice upon the opposite party to shew cause, within eight days of the date of order or as soon as the case can be heard, why a new trial should not be directed. A new trial shall not be granted on the ground of misdirection or the improper

reception or rejection of evidence unless in the opinion of the Court to whom the application is made some substantial wrong or miscarriage has been thereby occasioned by the trial of the action, and if it appears that such wrong or miscarriage affects only a part of the matter in controversy the Court may give final judgment as to the other part and direct a new trial as to the defect (O. XXXIX. r. 3). A new trial can be ordered on any question in an action (r. 4). Where damages are outrageously heavy so as to induce a strong presumption of partiality in the minds of the jury a new trial will be granted (*Smith* v. *Brampton*, 2 Folk. 644). Only on strong grounds is a Court disposed, however, to interfere with the verdict of a jury (*Odger* v. *Mortimer*, L. T. N.S. 472). It will do so where damages are inadequate as well as where they are excessive (*Kelly* v. *Sherlock*, L. R. 1 Q. B. 677; *Falvey* v. *Stanford*, L. R. 10 Q. B. 54); or where mere misdirection as mentioned above (*Hearne* v. *Stowell*, 11 L. J. Q. B. N.S. 25; *Beatson* v. *Skene*, 29 L. J. Ex. 430), or where irrelevant matter were held protected and was not so (*Stace* v. *Guffril*, L. R. 2 A. C. 420) or where the actual libel was by neglect not produced in the Court below.

Remittal of Actions to County Court. Under the 66th sect. of the County Court Act, 1888, running as follows: "It shall be lawful for any person against whom an action for tort is brought in the High Court to make an affidavit that the plaintiff has no visible means of paying the costs of the defendant, and thereupon the judge of the High Court shall have power to make an order, unless the plaintiff shall, within a time to be mentioned, give full security for the defendant's costs, or satisfy the judge of the High Court that he has a cause of action fit to be prosecuted in the High Court . . . the action will be remitted for trial before a

Court to be named in the order." In *Farren* v. *Lowe & Co. and Medley*, where a libellous charge was made against the plaintiff that he embezzled certain sums of money, and the defence was justification, the action was remitted under above section. On appeal, Denman, J., stated that a cause fit to be prosecuted did not mean a cause which must succeed, but one of superior fitness to be tried in the High Court, and, that particular case being a very serious one, he reversed the order of remittal made below, and left the case in the Superior Courts (5 T. L. R. 237). In *Stokes* v. *Stokes* (19 Q. B. D. 62) it was ruled that there is jurisdiction under the 10th sect. of the County Court Act (30 & 31 Vict. c. 142, s. 10) to remit an action for slander, the words of the section clearly showing that a Court or judge can do so in any case of "malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, *libel*, *slander*, seduction, or other action of tort."

The Effect of a Verdict for Nominal Damages. In many actions the jury, evidently as a compromise, award merely nominal damages, often to mark their disapproval of the proceedings and their sense of the triviality of the injury incurred. If the verdict does not carry costs it effects that purpose, but now it lies in the discretion of the judge who tries the case to certify for costs or not. Before the Judicature Act any verdict under 40*s.* did not carry costs, but the matter rests now with the Court. In the case of a jockey named Wood against Cox, the proprietor of the *Licensed Victuallers' Gazette* for a libel charging him with "pulling a horse" on two occasions, and thus implying unfair riding, the defendant, pleading the truth of the statement and that the words were not published falsely or maliciously, the jury (the

case occupying nine days at hearing) gave plaintiff a verdict for a farthing. On appeal from certificate of the Lord Chief Justice it was contended that the verdict was not "good cause" within the meaning of O. LXV., r. 1. In *Moke* v. *Hill* (4 T. L. R. 738) the Court ruled that a verdict of a farthing in an action for libel was an element to be taken into account. In *Jones* v. *Curling* (13 Q. B. D. 268) it was held that the facts must shew "the existence of something having regard either to the conduct of the parties or to the facts of the case which make it more just that an exceptional order should be made than that the case should be left to the ordinary course of taxation." In *Cooper* v. *Whittingham* (15 Ch. D.) most of the circumstances constituting "good cause" were set out by the late Master of the Rolls. Cotton, L.J., in Appeal Court, in *Wood* v. *Cox* (*supra*), held that as a matter of business no jury would give a plaintiff merely a farthing damages for a libel if they believed that his evil reputation was not founded on truth. A man with such a character had no right to bring an action, and if he did he acted oppressively, and therefore "good cause" existed for depriving him of costs. Bowen, L.J. concurred, holding that if a jury gave such damages they implied plainly that the action should not have been brought, and that the plaintiff acted oppressively in bringing it. Fry, L.J., thought the defendant should not be made pay the costs of an action which should never have been brought against him, and the smallness of the damages indicated the view of the jury (5 T. L. R. 272). From these weighty, authoritative pronouncements it may safely be stated that a nominal verdict should never be made in a libel action to carry costs, and is in itself "good cause" for a judge to refuse to certify for costs.

In three cases tried together and all adjudged alike,

namely *Bowen* v. *Bell*, *Brooks* v. *Israel*, and *North* v. *Bilton* (4 Q. B. D. 95), where in actions severally tried by a jury the plaintiffs severally recovered a farthing damages, and no application or order as to costs was made at the trial, the Divisional Court was held to have jurisdiction under O. LX. of Judicature Act, to entertain the application to deprive the plaintiff of costs, but that such application will be entertained only when made within a reasonable time after the trial. In *Garnett* v. *Bradley* (36 L. T. 640); and *Parsons* v. *Tinling* (2 C. P. D. 119), it was decided plaintiff was entitled to his costs unless the judge's order was made otherwise). In *Baker* v. *Oakes* (2 Q. B. D. 171); *General Steam Navigation Co.* v. *London & Edinburgh Shipping Co.* (2 M. D. 467) it was decided that a Court in such verdicts could make any rule as to costs it liked. In *Kelly and Sherlock* (L. R. 1 Q. B. 239) a farthing damages were awarded for a gross libel and the verdict upheld, and in *Cooke* v. *Brogden & Co.* (1 T. L. R. 497) it was held that there was no inconsistency in a jury giving a farthing damages, even though at same time they held the libel was malicious.

By the Libel Act (Ireland), 1868, 31 & 32 Vict. c. 69, passed for the purpose of assimilating the law in Ireland to that in England as to costs in an action for libel, it is enacted that in all actions for libel where the jury give damages under 40*s.* the plaintiff shall not be entitled to more costs than damages unless the judge before whom the verdict shall be obtained shall immediately afterwards certify on the back of the record that the libel was wilful and malicious. By sect. 2 it is further enacted that such shall not apply to England or Scotland. By sect. 5 of the County Courts Act, 1867, it is enacted that in any action commenced after the passing of the Act in any of Her

Majesty's Superior Courts of Record, whether by verdict, judgment by default, or on demurrer, the successful party shall not be entitled to any costs if he shall recover a sum not exceeding 10*l.* if the action is founded on tort, unless the judge shall certify that it was a fit case for the superior Court, or unless a Judge at Chambers or the Court shall by order or rule allow such costs. By the 67th sect. of Judicature Act this applies to all actions, and by sect. 49 no order as to costs shall be subject to appeal unless by leave of the Court making such order (*Kent* v. *Lewis*, 21 W. R. 413; *Gray* v. *West and Wife*, L. R. 4 Q. B. 175; *Creaven* v. *Smith*, L. R. 4 Ex. 146; *Sampson* v. *Mackay*, 38 L. J. Q. B. 245).

A certificate should be applied for immediately, and no interval allowed to elapse after trial (*Forsdike* v. *Stone*, 37 L. J. C. P. 301). In an action for slander, where some of the counts were for actionable words and others were not so but special damage was laid for all, and the plaintiff had a verdict on all counts for 40*s.*, he was held entitled to full costs (*Saville* v. *Jardine*, B. R. 531).

Lodging Money in Court. Often a difficulty may arise about the effect of a lodgment of money in Court, and its relation to a plea of justification in connection therewith. Before a recent case of *Fleming* v. *Dollar* (5 T. L. R. 589), the question was never raised before, but the principle, there laid down and determined is most important. There the publication was admitted to be libellous, as to which the defence set forth a number of facts respecting which the defendant averred that whether they justified the whole of the libel or not, he did not know, but assuming that they did not, he paid into Court 40*s.* in respect of those parts of the libel which it did not cover. This had been struck out in

the case as repugnant to the Judicature Rule, Order XXII. providing that a defendant may with a statement of defence denying liability (except in actions of slander and libel) pay money into Court. The plea was also considered embarrassing in so far as it did not specify the charges which it was intended to justify, and those which it admitted were not justified or excused, and in respect to which the money had been paid into Court. Coleridge, C.J., thought the rule was expressly designed for this sort of defence in consequence of the decision of *Hawkesley* v. *Bradshaw* (5 Q. B. D. 22, 302), that it might be done. The Rule permitting payment into Court generally along with another defence expressly excepts actions of libel. The defendant, therefore, may justify some parts of a libel where it is expedient to do so, and confess a cause of action as to the remaining parts, but he cannot as to the same libel or part of a libel justify it and pay money into Court. Where there were separate and distinct libels or parts of a libel it is only fair that the defendant should be allowed to justify some and pay money into Court as to the others, though there are dicta of Campbell, C.J., in *R.* v. *Newman* (1 E. & B. 268), to the effect that where there was justification of a libel pleaded it must justify the whole and be proved *in toto*. In the case of *Fleming* v. *Dollar* (*supra*), it was left doubtful which parts were justified and which not, and the plea was therefore held to be embarrassing and to be within the exceptions of the rule. Hawkins, J., concurred in this ruling of the Lord Chief Justice.

In an Irish case of *Harris* v. *Arnott* the Exchequer Court held that the money paid in under Lord Campbell's Act could not be withdrawn unless in satisfaction. But in England the parts of the section as to money in Court is repealed so that the law may now be different in the two countries.

Imprisonment for Libel—Recent Cases.

v. *Hill and another.* This was an action for criminal libel against the publishers of a paper called the *Modern Owl*, and where the matter complained of was a paragraph running as follows:—"Doesn't Jones' man who comes from Dunstable like to play with the Avery waiter in Bute Street? Never mind, he will get caught before long." The jury found the defendants guilty, and the judge (Cave, J.), severely commenting upon the scurrilous character of the publication, sentenced the publisher to six months' imprisonment (Circuit case at Bedford Assizes, 1888). A further action was tried at Warwick against the printer and publisher of the same print for libel, and the jury having found for the plaintiff evidence was given of the cessation of the papers and of the previous sentence, so the judge ordered defendants to enter into recognisances to come up for sentence when called. And in the case tried at the London Central Criminal Court on May 30, 1889, of *Walker & Harvey* v. *William Riley*, the defendant pleaded guilty to libelling Mr. Arthur Gladstone Walker and Mr. Richard Harvey, who were concerned in the management of his mother's business. The business was not successful, and the defendant and his mother—so it was alleged—had persistently pursued the prosecutors and libelled them. At the last monthly session Riley got the case postponed on the declaration that he would justify all his statements. Again, on the next day, he got the case adjourned on the same plea. Now no attempt was made at a justification.—Sentence of three months' imprisonment was passed.

These two recent cases sufficiently attest the power of the Court to visit libels with severe punishment. The duration of the sentences is, as already seen, regulated by the provisions of the 6 & 7 Vict. c. 96, sects. 2 & 3.

CHAPTER XI.

WHAT CONSTITUTES A PUBLICATION?

THE question of publication is an important determining fact in every case of libel, for without its proof no action is sustainable. There are various modes of publication (*Burdett* v. *Abbott*, 4 B. & A. 160); but subject to the exception of privilege a communication to a third party of any defamatory matter is actionable, and in case of libel "it is nothing more than doing the last act for the accomplishment of the mischief intended by it" (*per* Best, J., in *R.* v. *Burdett*, 4 B. & A. 126). The mode of proving a publication in a newspaper was provided by stat. 6 & 7 Wm. 4, c. 76, ss. 7 & 8. So far this is modified by the Act of 1881, which makes an entry in the register of newspaper proprietors evidence, but it can only be so of an individual or representative proprietorship, not of a company, and it can only be evidence of the fact that in July of that year such proprietorship existed (see remarks on Registration). Holroyd, J., held (4 B. & Ald. 143), that the moment a man parts with a libel he ceases to have control over it, unhappily not ceasing to incur liability for it (*Griffith* v. *Lewis*, 7 Q. B. 61; *Fryer* v. *Gathercole*, 4 Ex. 262; *Cook* v. *Ward*, 6 Bing. 409). The inference of malice is presumable where "the tendency and import of the language used in any publication is to defame and injure another" (*per* Littledale, J., in *Haire* v. *Wilson*, 9 B. & C. 645), but it may be rebutted by proof of privilege that circum-

stances do entitle it to be so considered, or that the occasion prevents the inference; but then it may be shewn that there was actual express malice (*Toogood* v. *Spyring*, 1 Cr. M. & R. 193; *Darby* v. *Ouseley*, 1 H. & N. 1; *Cooke* v. *Wildes*, 5 E. & B. 328; *Tuson* v. *Evans*, 12 Ad. & E. 733; *Hemmings* v. *Gasson*, 1 E. B. & E. 346.)

The truth is an answer to an action (*per* Littledale, J., *McPherson* v. *Daniells*, 10 B. & C. 272) not because it negatives the charge of malice, but because it shews plaintiff is not entitled to damages, for the law will not permit a man to recover damages in respect to a character he either does not or ought not to possess. One may publish a libel by reading it aloud (4 B. & A. 160), by selling it or distributing it gratuitously, or sending it by post whereby it gets into the hands of a third party, even to a man's wife (*Wenman* v. *Ash*, 13 C. B. 836).

Of course, and properly, more weight attaches to what is written, as the *littera scripta* have relatively about them every circumstance of deliberateness and consideration which do not usually characterise words which may be spoken in a hurry, or under circumstances of peculiar provocation from the conduct, demeanour and manner of the aggressor. The tendency of the decisions has been to assume that anything defamatory which is found out of the custody of the writer may be held, unless the contrary is proved, to have been published by him. In one case a libellous manuscript was so held, although the writer never directed or authorised its publication (*Bond* v. *Douglas*, 7 C. & P. 626; *R.* v. *Lovett*, 9 C. & P. 462; *Burdett* v. *Abbott*, 5 Dow. H. L. 201; 14 East, 1). Even where criminatory matter was struck out of the copy for the printer by the editor its communication to the editor was

held to have been a publication (*Tarpley* v. *Blabey*, 2 Bing. N. C. 437). Telling a reporter to publish libellous matter was held in an American case sufficient publication (*Clay* v. *People*, 86 Ill. 147), or telling defamatory stories to an editor with a view of their publication (*R.* v. *Cooper*, L. J. 15 Q. B.; *Adams* v. *Kelly*, Ry. & Moo. 157), or asking the press at meetings to take notice of remarks (*Parkes* v. *Prescott and Ellis*, L. R. 4 Ex. 105). Giving a libel to a third party is actionable (*Maloney* v. *Bartley*, 3 Camp. 213). All directly concerned in the publication are liable (*Lamb's Case*, 9 Rep. 60; *Burdett* v. *Abbott*, 5 Dow. H. L. 201; *Baldwin* v. *Elphinstone*, 2 W. Bl. 1037); the proprietor, editor, printer and publisher; and they can be sued separately or together (*Colburn* v. *Patmore*, 1 C. M. & R. 73; 4 Tyr. 677), and there is no contribution. Of course the defendant may conclusively show how a mistake for which he became liable was made. Where a libel had been published charging a man with taking part in a riot it was pleaded that the publication was inserted without malice or gross negligence, and that an apology had been inserted within a reasonable time (*Peters and another* v. *Edwards and another*, 3 T. L. R. 694). Willis, J., in summing up said that, to negative negligence, it was merely incumbent on the defendant to shew how the mistake alleged came to be made. No explanation was tendered as to the mistake, and the jury awarded plaintiffs 100*l.* each. In *Day* v. *Bream* (2 M. & Rob. 54) a person delivering a libellous handbill was held responsible (*R.* v. *Dodd*, 2 Sess. Cas. 83 and *Nutt's Case*, Fitz. 47; 1 Barnard). A master is responsible for acts of publication by servants done in the course of their business. In *R.* v. *Alman* (5 Burr. 268; *R.* v. *Gutch*; *Fisher and Alexander*, Moo. & Mal.) the sickness of the master was held an excuse, and in *Emmens* v. *Pottle & Sons* (16 Q. B.

354; L. J. 55 Q. B. 51). *R.* v. *Wyatt* (8 Mod.) defendants were held innocent of publication, as they proved they did not know the contents of the libels and had no reason to suppose they were defamatory. No difference is recognised whether the libel is sold or shewn confidentially, as was held in a case (A. & E. 149) by Denman, C.J.; but the mode and circumstances of publication will be matters to be considered by the jury. Publishing extracts from a pamphlet was held libellous (*Davis* v. *Lewis*, 7 T. R.; *Tidman* v. *Ainslie*, 10 Ex. 63; *Mills and Wife* v. *Spencer Holt* (N. P. 533); *McGregor* v. *Thwaites* (3 B. & C., 4 D. & R.), or publishing defamatory rumours (*Watkin* v. *Hall*, L. R. 3 Q. B., L. J. 37; *Richards* v. *Richards*, 2 Moo. & Rob.). In *R.* v. *Walter* (3 Esp.) the proprietor of the *Times* was held criminally liable, although he actually was living in the country, and had given over the management of the paper to his son. He can now plead under Lord Campbell's Act; but there is little doubt about his civil liability under such circumstances. Under sect. 2 (6 & 7 Vict. c. 92) the proprietor may plead that the libel was inserted without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity after, he inserted in such newspaper a full apology, and paid money into Court. (See *supra*, Chap. X.)

A scandalous libel may be published *traditione* (*per* Holroyd, J., 4 B. & Ald. 143) when he libel or a copy of it is delivered over to scandalise the party. So the mere delivering over or parting with a libel with that intent is deemed a publishing. "It is an uttering of the libel, and that I take it to be the sense in which the word publishing is used in law. Though in common parlance that word may be confined in its meaning

to making the contents known to the public, yet its meaning is not so limited in law" (*Griffiths* v. *Lewis*, 7 Q. B. 61).

Formerly great strictness was required in setting out that the libel was published or words were used by the defendant, and a failure therein led to a nonsuit or to an arrest of judgment (*Hearne* v. *Stowell*, 2 Ad. & E. 719). Now the Common Law Procedure Act of 1853 (Ireland) or 1852 (England) simplifies procedure and renders prefatory averments unnecessary, and where the words now shew a cause of action the declaration shall be sufficient.

A review, brief though it must necessarily be, of the principal authoritative decisions under the head of publication will sufficiently explain the principle. In *Harrison* v. *Pearce* (1 F. & F. 567, 32 L. J.); *Tucker* v. *Lawson* (2 T. L. R. 593), where two distinct libels were published wholly unconnected, no common liability was established, nor was the fact of one libel taken into account, nor was in *De Crespigny* v. *Wellesley* (5 Bing.) authority to publish sufficient to hold the party harmless for his act of publishing. In *Hearne* v. *Stowell* (2 A. & E. 719, 6 Jur. 458) a man was held guilty of slander and libel at the same time, as he read a defamatory paper written by another; a printer was held responsible for a libellous letter in *Johnson* v. *Hudson and Morgan* (7 A. & E. 233). In *R.* v. *Walter* (3 Esp. 21); *Storey* v. *Wallace* (11 Ill. 51); *Scripps* v. *Reilly* (38 Mich. 10), a proprietor of a paper was held liable for everything published in his paper, even in his absence or without his knowledge; not in criminal cases, as seen in *R.* v. *Hollbrook and others* (3 Q. B. D. 42, 47 L. J. Q. B. 35); (*supra*); a printer was, though he had no knowledge of the contents (*R.* v. *Dover*, 6 H. State Trials, 2 Atkyns, 472). In *Watts* v. *Fraser* (7 C. & P. 369)

the acting editor was away; and in the *Commonwealth* v. *Kneeland Thacker's Case* (C. C. 346) the editor could plead, though the proprietor was liable, that it was published without his knowledge and against his will; or without his knowledge that it was a libel on any individual (*Smith* v. *Ashley*, 52 Mass.); the proprietor is liable for all advertisements that are published and paid for (*Harrison* v. *Pearce*, 1 F. & F. 567); the editor is responsible also (*Keyser and another* v. *Newcomb*, 1 F. & F. 559); a republication from another paper is libellous (*Talbuk* v. *Clarke*, 2 M. & Rob. 312; *Saunders* v. *Mills*, 3 M. & P. 520, 6 Bing. 213); every sale and delivery is a fresh publication (*Chubb* v. *Flannagan*, 6 C. & P. 431); buying a paper seventeen years old, despite the Statute of Limitations in the *Duke of Brunswick* v. *Harmer* (14 Q. B. 185), was held to have been a fresh publication.

The fact of the publication and of its being published in the sense assigned to it, and the existence of the circumstances relied upon in justification or excuse, are for the jury as also the question of malice. "The jury," says Buller, J., in *R.* v. *Watson* (2 T. R. 206), "should read the paper stated to be a libel as men of common understanding, and say whether in their minds it conveys the idea imputed." In *Gourland* v. *Fitzgerald and others* (4 T. L. R. 20) the particulars of the publication were required, but refused on the ground that they should be stated in pleadings.

In *Hibbins* v. *Lee* (4 F. & F. 243) it was held to be the duty of the publisher to give up the name of the libeller, and his refusal to do so made him liable.

A republication of a libellous paragraph from another paper is no defence. Where it was pleaded that the paragraph appeared in an American journal previously, was inserted without malice or gross

negligence, and that a full apology had been subsequently published and a sum of 10*l.* paid into Court, the jury held this insufficient, and awarded plaintiff 200*l.* (*Dolly* v. *Newnes*, 3 T. L. R. 184).

In the case of *R.* v. *Holbrook* (5 Q. B. D. 56) it was laid down that there must be evidence to shew that the defendant published the libel, other than the mere fact of his publishing the paper in which it appeared. In that case the defendant had made over the control to an editor, telling him "to use his own discretion, and to do what he thought right." The judge thought the jury might infer from this a general sanction, but the Court of Queen's Bench held that the consent in libel must be shewn and also decided, that the fact that a man is editor is not enough, unless there is also evidence given to shew that he edited or inserted or sanctioned the incriminated article, Lush, C.J., stating that "the authority of a proprietor to edit and publish what is libellous is no longer to be, as it formerly was, a presumption of law, but a question of fact." Before the Act the only question of fact was whether the defendant authorised the publication of the paper; now the question is whether the defendant authorised the publication of the libel (15 Cox's C. C.). In the case of *O'Brien, Ex parte* (15 Cox's C. C.), upon application for a criminal information against the proprietor of a newspaper for publishing a seditious libel, evidence was tendered under 44 & 45 Vict. c. 60, s. 4, of the truth of the libel, and that it was for the public benefit that it should be published. The magistrate had refused to receive such evidence, and, upon application to the Queen's Bench Division for a conditional order for a mandamus to compel the magistrate to receive the evidence so tendered, it was held that no such matter could be given in evidence at the trial,

and that the magistrate was right in refusing it. The case of *R.* v. *Duffy* (9 Ir. L. R. 329) was approved of and followed. This is now altered by Act of 1881.

In *Wood* v. *Cox*, decided June, 1888, before Coleridge, C.J. and a special jury, the question of whether a prosecution or an action for the publication of a libel should be taken was raised, and a weighty expression of opinion on the matter pronounced by the judge, who said that the principle on which prosecutions should be allowed has been laid down by himself as the mouthpiece of a strong Court in a recent case (*R.* v. *Labouchere*), in which he cited the opinion of other judges to the effect that "a criminal prosecution ought not to be instituted unless the truth of the matters charged was denied, and that it was for the public benefit that the said matters charged should be published."

All these important points were decided in the most recent case of *R.* v. *Ramsay and Foote* (15 Cox's C. C.). "Where the publication was such as can reasonably be construed as one calculated to disturb the peace of the community, in such a case the Public Prosecutor has to protect the community in the person of an individual, but private character should be vindicated in an action for libel, and an indictment for libel is only justified when it affects the public as an attempt to disturb the public peace" (4 T. L. R. 654). It is to be hoped this excellent principle will guide the Courts in such cases. By the recent Act the power to authorise prosecutions is by sect. 8 reposed in a judge at Chambers, and not, as by the Act of 1881, in the Attorney-General in Ireland and Public Prosecutor in England.

A criminal information, however, can be filed by leave of the Court on motion by a private person against a newspaper proprietor for a libellous publication without

the fiat of the Director of Public Prosecutions, notwithstanding sect. 3 of the Act of 1881 (*Queen at the prosecution of Lord Londsdale* v. *Yates*, 3 T. L. R. 193). The Master of the Rolls, Lords Justices Lindley and Cotton there held that the enactment could not apply to *ex officio* informations, and that, this being clear, it went a long way to shew that it did not apply to informations at all, and that it only applied to prosecutions by indictment. As regards sect. 6 of the Vexatious Indictment Acts, and sect. 3 of the Libel Act, it was held that they were not cumulative but alternative. By the first (52 Geo. 3, c. 60) the terms are, any indictment or information; in the next (60 Geo. 3 and 1 Geo. 4), the Acts dealing with seditious libels, neither term is used; in 3 & 4 Vict. c. 9, the Parliamentary Papers Act, the phrase used is "civil or criminal proceeding," and in Lord Campbell's Act, 6 & 7 Vict. c. 96, the words are "any indictment or information." The words of sect. 3 of the Act of 1881 apply to criminal prosecutions and proceedings before a magistrate, and the enactment does not apply to a criminal information for libel. The 8th sect. of the Act of 1888 does not alter the law as there laid down.

The 6 & 7 Vict. allows a defendant to answer a presumptive case of publication by the act of some other person by his authority, by proving that in fact the publication was made without his consent or knowledge, and did not arise from want of due care on his part, curiously omitting to say if such proof is to entitle him to an acquittal, but obviously meaning it to be in mitigation of damages. The expression "defamatory libel" had no recognised legal meaning before the Act, and was held not to include seditious or blasphemous libels (*R.* v. *Duffy*, 2 Cox's C. C. 49). On the trial of two persons on an indictment for publishing blasphemous

libels in a certain print or paper, on which their names were given, one as printer the other as publisher, proof of their identity with the persons whose names were so given or any evidence merely connecting them with the paper, was held not sufficient to fix them with the liability. The 7th sect. of the Libel Act (6 & 7 Vict. c. 76) was held to apply and to require evidence that they published the libels, and not merely the paper in which they were contained. Evidence that one of them published the paper was, however, held sufficient *primâ facie* as against him, without any express evidence that he knew of the libels, but express evidence as to the other that he was editor was not held to be sufficient without evidence that he directed the insertion of the libels. Publishing a denial of the truth of the Christian religion or of the Scriptures is not enough *per se* to constitute a writing a blasphemous libel so as to render the writer or publisher indictable. But indecent, coarse, and offensive publications on Christianity or the Scriptures, or sacred objects or persons, calculated to outrage the feelings of the general body of the community do constitute a blasphemous publication, and render such writings liable at common law to criminal prosecution.

In a seditious libel the jury must consider the intention of the party uttering the libel, and the mere publication in itself won't constitute the crime. "To be a crime, the publication must be intentional. Moreover, the meaning of the whole of the words published taken together must always have been defamatory. "Certain circumstances may excuse and justify a man in publishing a libel" (Stephen's "Hist. of Criminal Law," vol. ii. p. 352). The jury are "to be judges of the publication, whether intentional or not, where the indictment fairly represents the defamatory character

of the matter published, and whether or not the publication was excused or justified by the circumstances" (*ibid.*).

In *R.* v. *Shipley*, Ashhurst, J., says where the fact of publication is ambiguous (as where there may be a doubt whether the party pulled the paper out of his pocket by accident or on purpose, or whether he gave one paper instead of another, or any other supposable case), then the maxim holds, "Actus non facit nisi mens rea sit" (*R.* v. *Watson*, 2 B. & C. 257).

Not merely will the actual publisher be liable criminally, but so will any person who shall threaten to publish any libel upon any other person, or shall directly or indirectly threaten to print or publish or propose to abstain from the printing or publishing of any matter or thing touching any other person," with intent to extort any money or security for money or any valuable thing from such or any other person or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust (6 & 7 Vict. c. 96, s. 3).

In *R.* v. *Bearne* (1 Ld. Raym. 417), and *Lamb's Case* (9 Cox, 59), proof of a document in the handwriting of a defendant corresponding with the libellous one, was held *primâ facie* evidence of publication. If a libel contains any marked peculiarities of spelling, style or composition, letters of the defendant with the same peculiarities are admissible in evidence. And in *R.* v. *Sullivan*, in Irish Exchequer Court, Palles, C.B. held the published criminal utterances of a man in his own paper were equivalent to confessions and admissions. In the case of *R.* v. *Harrington*, tried in the Irish Exchequer Courts in Jan. 1889, the question of whether the proved proprietorship of a paper as shown by the Register of Newspapers under Act of 1881, made such

person also the publisher of that paper so owned by him was ruled. In a well-considered judgment, Palles, C.B., with him Dowes, B. and Andrews, J., speaking for the full Court its unanimous judgment, decided that the copy of the Newspaper Register being "admissible in evidence, and *primâ facie* proof that the defendant was the proprietor of the paper, the second point is, Is the fact of his proprietorship evidence of publication, using that word as meaning the mere fact of publication, irrespective of the alleged criminal intent? It is admitted that, if this there were an indictment for libel, it would be such proof. Is there, then, a distinction in this respect between the present proceeding and an indictment for libel? The distinction relied upon is one which affects not the act of publication, but the criminal intention. In this respect libel and nuisance, under the 6 & 7 Vict. c. 96, were, as to criminal intention, governed by a principle different to other crimes, and, as in *R.* v. *Holbrook*, the intention of the Legislature in that Act was to place the proprietors of a newspaper in the same position as any other employer whose servant had in the course of his employment committed an offence against and to the injury of a third party, making the criminal intention a matter for the jury, I am of opinion that, when in any proceedings, civil or criminal, it becomes material to prove the publication of a newspaper, proof of proprietorship under Act of 1881, and that it was sold in the registered office of the paper in the ordinary course of business, is *primâ facie* evidence of publication by the proprietor of the newspaper." In the case of *R.* v. *O'Doherty*, Pennefather, C.B. stated the law as to publication very clearly: "If the indictment were for libel, that the defendant published in a certain newspaper a certain matter or thing, this would be conclusive

evidence that he was the publisher of that paper so as to subject him to all the penalties attaching to the publishing of such a paper. This indictment is not merely for the publication of this paper, but it charges the prisoner with the intention of deposing our lady the Queen, and that he expressed his intention by publishing and printing these articles, so that to find out whether he formed that intent you must be of opinion that he knew the contents of these papers which he published, because it is from these publications alone that his intention is to be collected. The Act makes it conclusive against him that he did publish, and his being the publisher is evidence to go to you that he knew everything that was in the paper, but it is not conclusive evidence of that fact—it is not conclusive that he knew it." This was followed by Pigot, C.B., in *R.* v. *Martin.*

A publication that might be allowed if discreetly made may become libellous if under aggravating circumstances of publicity. The distinction drawn by the Courts, and very properly drawn, between a publication of a statement in a manner and under circumstances to unnecessarily aggravate the offence, is seen best illustrated in the decision in a recent case of *Smith* v. *Crocker* (5 T. L. R. 441), where a post card was used as the medium of conveying a defamatory statement to persons who were customers of the defendant. A circular was also sent for the same purpose, and conveying the same information respecting a carrier lately in the employment of the plaintiff in the case. The judge directed that, while the circular might claim protection as a privileged communication, the publication by means of the open card was not so, and the jury found for plaintiff in 10*l.* damages.

In *R.* v. *Cooper* (1 Cox's C. C.) it was held that a person who requests another to write a libel upon a third party which is afterwards published is responsible for that libel so published, although it may actually contain other facts and charges than those which were originally communicated. Thus, where A. requested B, the editor of a newspaper to show up C, and told him some facts upon which to ground an article, B said he would; but, as some delay occurred, A asked why it was not done, and after the libel was published expressed his approbation of it. It was held A was properly convicted of publishing the libel so published, although it contained many facts not suggested by him. In *R.* v. *Payne* (1 Carth. 405; 5 Mod. 163) the Court held that a man who dictated a libel was not liable to an indictment, and that only the person was criminally responsible who reduced it to writing and published it. But recent cases did not support that decision. In *Tarpler* v. *Blabey* a person was held liable for publishing a libel, even though the objectionable matter was struck out (2 B. N. C. 437). Where publication is admitted by a defendant it is not allowable to administer or answer fishing interrogatories as to the name of the writer, or a discovery as to the original manuscript (*Hennessy* v. *Wright*, W. N. 80, 162). The privilege which extends to the publication of fair and accurate reports of certain public meetings does not extend to statements made to an editor (*Davis* v. *Shepstone*, 11 Ap. Cas. 187). A report of proceedings in a police or other court which states as proved facts matters opened by the solicitor or counsel for the prosecution or plaintiff, but which are contradicted by the evidence for the defence which is not published, is not a fair report to claim protection. It has been considered a misdirection in a case of a some-

what similar kind to direct that if the jury find the words libellous they are to return a verdict for the plaintiff or the converse. The whole report should be left to the jury, and they should be asked to decide if it is a fair report (*Ashmore* v. *Borthwick*, 49 L. P. 792). In *Hatchard* v. *Metge* (Div. C. W. N. 8012; Q. B. D. 771) it was ruled that a personal representative may after the plaintiff's death continue an action for the publication of a false and malicious statement causing damage to the plaintiff's personal estate, and can recover on proof of special damage, but an action for defamation both of private character, or of a person in relation to his trade, comes to an end on the death of the plaintiff. If the action is of a double character the slander of both survives, though the libel dies. O. XVII. A wife cannot since the Married Women's Property Acts, 1870–84, take criminal proceedings against her husband for a defamatory libel (*R.* v. *Lord Mayor of London*, 16 Q. B. D. 772).

A case of *Campbell Praed* v. *Graham*, the editor of a defunct paper called *The Gentleman*, was heard before Denman, J., and a special jury on June 6, 1889. Here the cause of action was a defamatory statement made of plaintiff in a letter sent her by defendant enclosing a cheque for her contributions to his paper. The libellous part was as follows: "It is with regret, however, I must here say that it will be quite impossible for me to number you any further among my contributors. Your husband's conduct last night in asking a young lady under my charge, and in my hearing, to dine with him alone was so unheard of as to render any further relations, even of a business nature impossible." The defendant admitted the writing of the letter, but denied publication and that it was written falsely or maliciously, and also that being in a business communication the statements were privi-

leged. The jury returned a verdict for 500*l.*, and the judge refused to stay execution. On May 30 an action was tried before Denman, J., and a special jury at the writ of a Col. Hill, Miss Hill and others, against the publisher of the *Sportsman* for a libel contained in a statement in that paper that they had played tennis in a certain town under assumed names, being professionals, and that such conduct caused commotion, and that the matter was to be brought before the Lawn Tennis Association. The plaintiffs denied that such a matter was ever brought before the body, and defendant pleaded fair comment and that it was a matter of public interest, and that an apology was inserted. The jury returned a verdict for 25*l.*, the judge leaving it to the jury to say whether the paper was justified in publishing such a paragraph.

Publication to a Servant. In the case of *Lamb* v. *Munster*, tried before Grove, J., and a special jury at Nisi Prius, reported in the *Times* of March 5th, 1887, many interesting points were raised and ruled. The learned judge strongly expressed his opinion that publication to a servant was libellous, as distinguished from publication by a servant. Here an undoubted libel was handed a clerk to bring to a printer for printing, and it did not go farther. There was provocation, which the judge said might go in mitigation of damages, and the libel was three years old. No absolute or special damage had resulted, no employment lost nor any loss of professional gain. The jury found for plaintiff in 500*l.*, and that the letters handed to the clerk were published. Where a person happened to write down at the suggestion of another that he had robbed his employer, and would repay the moneys embezzled, and got his wife, also in the employment,

who was present, to witness, held that the communication was made under circumstances to protect it, and that such protection was not destroyed by the presence of others (*Jones* v. *Thomas*, 34 W. R. 104).

Publication by Mistake. In *R.* v. *Wyatt* (8 Mod. Rep. 123) a Dr. Middleton confessed he was the real author of the libel, and upon that confession the publisher was discharged, otherwise he would have been held liable. A man may often publish a libel of a person by mistake. In *Thompson* v. *Dashwood* (11 Q. B. D. 43) the defendant wrote defamatory statements of plaintiff in a letter to a third party under circumstances which made the publication of the letter privileged, but by mistake the letter was placed in an envelope directed to another person who received and read the communication. In an action for libel it was held, that the letter having been written under circumstances which caused the legal implication of malice to be rebutted, the publication to the third party, though made through the negligence of the defendant, was privileged in the absence of malice in fact on his part. Instructive analogous cases are *Fox* v. *Broderick* (14 Ir. R. C. L. 453); *Waring* v. *McCaldin* (7 Ir. R. C. L. 282); *Parsons* v. *Surgey* (4 F. & F. 247), *Searll* v. *Dixon* (4 F. & F. 250), *Harrison* v. *Bush* (5 E. & B. 344); *Lawless* v. *Anglo-Egyptian Cotton and Oil Co.* (L. R. 4 Q. B. 262); *Shepherd* v. *Whitaker* (L. R. 10 C. P. 262); *R.* v. *Holbrook* (3 Q. B. D. 60).

Adopting Name of Existing Publication. It is not allowable for a newspaper to adopt the name of an already existing publication. In *Walter* v. *Emmott* (1 T. L. R. 134) an attempt was made by the proprietor of the *Times* to prevent the adoption of the name

Morning Mail by a publication commenced in London as interfering with an existing publication named the *Mail* issued from the *Times* Office. Cotton, J. (affirming the decision of Pearson, J.) refused the injunction on the principle that what was done by defendant in adopting such name was not in reason calculated to induce people to buy that paper instead of or in mistake for the paper of plaintiff. The right of a proprietor of a newspaper or periodical to restrain another person from using a similar name for a similar publication is not founded on the right of property in the former, but rests on the equitable doctrine that the user of such a name is reasonably calculated to induce the public to believe the new paper is the old or original one of original owner, and to cause it to pass off, be purchased and supported as such. A plaintiff in such an action must show, not only that the assumption of the name was calculated to deceive the public, but that there is a probability of his being injured by such deception (*Borthwick* v. *The Evening Post*, 37 Ch. D. 449; 57 L. J. Ch. 406; 58 L. T. 252; 36 W. R. 434 (C.A.)).

Restraining the publication of Lectures.—A professor who delivers lectures in a class room is entitled to restrain their subsequent unauthorised publication, as such delivery was not equivalent to a communication of them to the public at large and are his own literary composition, which he can protect if made public without his consent (*Caird* v. *Sime*, 12 App. Cas. 326; 57 L. J. P. C. 2; 57 L. T. 634; 36 W. R. 199; 14 C. of S. Cas. H. L. 37 (H. L. Sc.)).

CHAPTER XII.

PRIVILEGED COMMUNICATIONS.

THERE is imparted by the law, in the public interest, to a certain class of communications, whether oral or written, a protection which is always recognised and respected. Without that security and privilege even private life would be unendurable. The great guiding principle which determines the immunity of such communications, as upheld uniformly and consistently in a long line of cases, is that there is a mutuality of interest in the communication, that it is for the interest of both parties that the information should be imparted, that one has a concern or duty, either public or private, legal or moral, in telling: *Harrison* v. *Bush* (5 E. & B. 344); *Wright* v. *Woodgate* (2 C. M. & R. 573); and the other a corresponding concern or interest in hearing or reading the imparted information: *Somerville* v. *Hawkins* (10 C. B. 583); *Lawless* v. *A. E. Co.* (L. R. 4 Q. B. 262). Without that co-ordination of interest no privilege exists: *Simmonds* v. *Dunne* (5 Ir. R. C. L. 358); *Speill* v. *Maull* (L. R. 4 Ex. 232); *Darkins* v. *Paulet* (L. R. 5 Q. B. 94). It has been held that privileged communications comprehend all statements (*Davies* v. *Snead*, L. R. 5 Q. B. 608; *Henwood* v. *Harrison*, L. R. C. P. 606), made *bonâ fide* in the performance of a duty either towards society (*Grant* v. *Secretary of State*, L. R. 2 C. P. 445), or the individual, with a fair and reasonable purpose of protecting the interests of the person making it, or

to whom it is made, and this strong presumption can only be rebutted by evidence of malice in the defendant, which it lies on the plaintiff to adduce (*Somerville* v. *Hawkins*, 10 C. B. 583). When once a confidential relation has sprung up between parties all communications between them are privileged (*Beatson* v. *Skene*, 5 H. & N. 838), and it is held they have a right to communicate to each other what they have a common interest in (*Shipley* v. *Todhunter*, 7 C. & P. 680). The writer may have some duty to discharge in regard to his correspondent, or have an honest belief that he has such. If so, the communication is presumptively privileged (*Cockayne* v. *Hodgkisson*, 5 C. & P. 543). The same applies to trade societies. In an action against an association formed for supplying information concerning ships, it was held, there being no proof of malice or unfair conduct, that it was entitled to publish its *bonâ fide* opinion although injurious to a particular plaintiff, and a motion to restrain such a publication was refused with costs (*Clover* v. *Royden*, 43 L. J. Ch. 165). Where a circular was issued by a member of a friendly society to the other members for the purpose of obtaining a statutory investigation into the solvency of the body, it was held privileged unless untrue (*Hall* v. *Hart Davis*, L. R. 21 Ch. D. 798). In the case of *Hart* v. *Gumpach* (L. R. 4 P. C. 439) for false representations, a new trial was granted on the grounds of misdirection, because the judge did not direct the jury to find whether the representations were wilfully false or true, and did not say that they were privileged, and that there was no evidence that they were false. The Appeal Court held that the representations were privileged and should be so explained to the jury by the judge, and also that if they were honestly made without proof of express malice they were to

find for the defendant, as on plaintiff lay the burden of proving malice. A bishop's charge was held privileged on the principle that if it was a communication made *bonâ fide* upon "any subject in which a party has an interest, or in reference to which he honestly believed he had a duty it is privileged if made to a person having a corresponding duty although it contain criminatory matter (*Laughton* v. *Sodor and Man*, L. R. 4 P. C. 495). However honestly a party believes information to be true, if untrue the law implies malice unless the occasion or circumstances justify belief (*Darby* v. *Ouseley*, 1 H. & N. 1). An advertisement *bonâ fide* giving information even if injurious, but issued by a party interested in publishing the information is protected (*Delany* v. *Jones*, 4 Esp. 191; *Maloney* v. *Bartley*, 3 Camp. 210). Thus in the *Capital and Counties Bank* v. *Henty* (7 App. Cas. 741; L. J. 52 Q. B. 232) it was held that there was no evidence that a circular issued by them was defamatory in a primary or secondary sense, and, even if so, it was issued on a privileged occasion and so protected in the absence of express malice. Where a person writes to a society that another is unfit for membership, the letter was held not actionable in *Robinson* v. *Jermyn* (1 Price 11); *Barbaud* v. *Hookham* (5 Esp. 109). While a member of a public body may be justified in making charges against a person at a meeting, he is not protected in sending a report of his remarks to a newspaper (*Simpson* v. *Downs*, 16 L. T. 391). And a solicitor who sent a fair report of law proceedings to a paper was not privileged, as it was held he did so having malice (*Stevens* v. *Sampson*, 5 Ex. D. 53). Whether a report is fair or not is for the jury (*Turner* v. *Sullivan*, 6 L. T. 130), and the privilege of newspaper reports extends to law books (*Blake* v. *Stevens*, 4 F. & F.) if

reasonable diligence and care for accuracy were exercised, and it is a good defence that it is a fair report (*Hoare* v. *Silverlock*, 9 C. B. 20): but it must be a report with no comments (*Andrews* v. *Chapman*, 3 C. & K. 286); nor a highly coloured one mixed up with personal observations (*Stiles* v. *Nokes*, 7 East, 493; *Carr* v. *Jones*, 3 Smith, 391) and there must be no libellous heading (*Lewis* v. *Clement*, 3 B. & A. 702), nor must a communication not made in Court be introduced into it (*Lynam* v. *Going*, 6 Ir. L. R. 259). A communication which ordinarily may be privileged (*Williamson* v. *Freer*, L. R. 9 C. P. 393), if made with too great a parade of publicity, is libellous as if sent by post card (*Robinson* v. *Jones*, Ir. L. R. 4 Ch. 391) or by a telegram (*Williamson* v. *Freer*, L. R. 9 C. P. 392). If by mistake a libel is put into a wrong envelope, it is held privileged in the absence of malice (*Thompson* v. *Dashwood*, 11 Q. B. D. 43). The report of proceedings must be confined to such, and disparaging remarks confined to what was uttered in Court (*Delegal* v. *Highley*, 5 Scott, 154). The remarks of a county court judge, however irrelevant, false, and malicious, are protected (*Scott* v. *Stansfeld*, L. R. 3 Ex. 220); of a coroner when acting as such (*Homer* v. *Churton*, 2 B. & S. 475), or a witness under examination (*Astley* v. *Young*, 2 Burr. 807); by counsel or solicitor when conducting a case (*Hodgson* v. *Scarlett*, 1 B. & A. 232); or the report of an auditor (*Lawless* v. *Anglo-Egyptian, &c. Co.*, 4 L. R Q. B. 262). Where, however, a person, not content with stating facts, puts his own gloss upon them, it was held evidence of malice (*Cooke* v. *Wildes*, 5 E. & B. 328). In *Lawless* v. *Anglo-Egyptian, &c. Co.*, as above cited, it was also held, as it was the duty of directors to send a report to shareholders, and the interest of shareholders to get it,

In *R.* v. *Casey* (13 Cox's C. C.), Barry, J., held that any person who, not being a journalist, undertook the part of a public commentator, should perform the self-imposed task with studied moderation and a strict regard to truth. A certain privilege attaches to a journalist, but that does not extend to volunteers who assume the duty of public censors. In *Blackburn* v. *Pugh* (2 C. B. 611) it was decided that information given to a person interested, if without malice, is privileged. In *Robshaw* v. *Smith* (26 W. R. Dig. 122) Lindley, J., said that it would be a lamentable state of the law if, when a person asks for information, another could not give it without exposing himself to the risk of an action. "It is immaterial if the occasion being privileged and there was no malice, if such information is true or not."

While a defamatory speech is protected when delivered in either House of Parliament, that immunity does not embrace a publication of the speech at the expense or with the authority of the speaker (*Vernon* v. *Lord Abingdon*, 1 Esp. 226, and *R.* v. *Creevy*). Campbell, C.J., held in *Davison* v. *Duncan* (26 L. J. Q. B. 104) that a member of Parliament who publishes an amended version of his speech in Parliament cannot justify as to that, although he might have spoken the same words in his place with impunity. But if a member were to repeat *bonâ fide* to his constituents what he said in the House for the purpose of explaining his conduct to them, he would be protected. In *Proctor* v. *Webster* (16 Q. B. D. 112) an action for libel was sustained against a person for making malicious charges in a letter to the Privy Council, but in *Lake* v. *King* (1 Wm. Saunds. 131) a libel addressed to a Committee of the House of Commons was protected, and in *Hare* v. *Mellers* (3 Leon. 138) it was held to be no

cause of action that a defendant exhibited to the Crown a slanderous libel against the plaintiff, charging him with forgery.

If the occasion of the publication is privileged, a *bonâ fide* belief and honesty of purpose will exempt from liability (*Palk* v. *Donovan*, 1 M. & S. 639). Where malice is not affirmatively shown on a privileged occasion, there is no case to go the jury (*Wright* v. *Woodgate* (2 C. M. & R. 573). Brett, L.J., in *Clark* v. *Molyneux* (14 Cox's C. C. 10) held that when a defamatory writing or defamatory words have been published, and the Judge has decided that there is privilege, it must be for some reason, and the defendant is only entitled to the protection afforded the privilege if he uses the occasion for the reasons for which the privilege is given, but not if he uses it otherwise. If he does not use the occasion for the reason for which the privilege was given, but uses it for some indirect or wrong reason or motive of his own, then there is malice. There are two tests to show whether there is malice when defamatory statements are published on a privileged occasion. One is if the defendant states what he knows at the time to be false, then every one assumes malice, and that he acted from a wrong motive, and no one inquires what the motive was. But, supposing it is not proved that the defendant at the time knew what he stated was false, still he may not be acting for the reasons for which the privilege was given, and, if from anger or any wrong motive he states as true what he does not know to be true, the jury may infer that he did not make the statements for the true reason, and if he acted for any other reason than that for which the privilege is given he would not be protected. These two tests have been time after time since applied by other judges, notably

by Bovill, C.J. and Willes, C.J. In *Bromage* v. *Prosser* (4 B. & C. 247) Cotton, L.J., held that once a judge rules there is privilege, the only question was, did the defendant act from a sense of duty or from other motives, and the burden of proof is on the plaintiff, as the presumption is in favour of the defendant. The plaintiff in such a case has to prove actual malice.

Denman, J., in *Tuson* v. *Evans* (12 Ad. and E. 736), declared that any one in the transaction of business with another had a right to use language *bonâ fide* which is relevant to that business, and which a due regard to his own interest makes necessary, even if it should directly or by its consequences be injurious or painful to another, but defamatory comments on the motives and conduct of the party with whom he is dealing do not fall under that rule of exemption. In *Adams* v. *Coleridge* (1 T. L. R. 84) defendant was sued by plaintiff for writing a defamatory letter to his sister, to whom plaintiff was engaged to be married, respecting him, and the defence pleaded (1) that the defendant did not write or publish any letters or words as in the statement of claim alleged; (2) that the letters and words complained of, and alleged to have been written or published by the defendant, do not bear the several meanings nor any of the meanings in the statement of claim alleged; (3) if the words complained of, or any of them, were written and published by the defendant as alleged, they were so written and published by him *bonâ fide* and without malice to such person, and under circumstances to constitute the same a privileged communication. The jury held that the letter was privileged, but that the privilege was exceeded, and returned a verdict for 3000*l.* damages, but the Judge refused to receive it and entered judgment for the defendant on the grounds

that there was no evidence before them upon which they could return such a verdict.

It has been ruled that a criticism on a published work is not a privileged occasion (*Merivale and Wife* v. *Carson, supra*). Blackburn, J., decided in *Campbell* v. *Spottiswoode* (3 B. & S. 769) that a "privileged occasion is one on which the privileged person is entitled to do something which no one who is not within the privilege is entitled to do on that occasion. A person in such a position may say or write about another person what no other person in the kingdom can be allowed to say or write. But in the case of a criticism upon a published work every person in the kingdom is entitled to do, and is forbidden to do, exactly the same thing, and therefore the occasion is not privileged." Lord Esher, in *Merivale* v. *Carson*, agreed with this pronouncement, and held that the jury further were to decide upon the meaning of the alleged libel, and that they must look at the criticism and say what they understand by it, and it was fair comment if the article in their opinion did not go beyond that which "any fair man, however prejudiced or strong his opinion, would say of the work in question. Every latitude must be given to opinions and to prejudices, and then an ordinary set of men with ordinary judgments must say whether any fair man would make such comments on the work. Mere exaggeration or even gross exaggeration would not make the comment unfair. However wrong the opinions expressed may be in point of truth, or however prejudiced the writer, it may be still within the prescribed limit." Bowen, L.J., agreed with the definition in *Campbell* v. *Spottiswoode*, "Whatever is fair and can be reasonably said of the works of authors, or of themselves as connected with their works, is not actionable, unless it appears that,

under pretext of criticising the works, the defendant takes an opportunity of attacking the character of the author, then it is a libel." This was Lord Tenterden's definition in *Macleod* v. *Wakeley* (3 C. & P. 311). If a man said of another that he wrote what he did not write, that would be beyond the limits. Instructive cases as to where a writer expresses his *bonâ fide* opinion and honest belief are *Hibbs* v. *Wilkinson* (1 F. & F. 608); *Eastwood* v. *Holmes* (*ibid.* 347); *Turnbull* v. *Bird* (2 F. & F. 508); *Carr* v. *Hood* (1 Camp. 355); *Strauss* v. *Francis* (4 F. & F. 939); *Paris* v. *Levy* (9 C. B. N. S. 342); *Thompson* v. *Shackell* (1 Moo. & M. 187); *Soane* v. *Knight* (*ibid.* 74); *Dibdin* v. *Swan* (1 Esp. 28), and *Davis* v. *Duncan* (L. R. 9 C. P. 396).

In *Stevens* v. *Kitchener*, a letter was written to a solicitor imputing to the plaintiff, who was a doctor, carelessness in his profession with fatal consequences. Judgment was entered for the defendant, as the occasion was held privileged and did not go beyond the limits, was confined to a matter in hand, was the honest belief of the defendant and was written honestly. Where the occasion, however, was exceeded and there was evidence of malice, there was no privilege (*Hemsley* v. *Ward*, 6 Com. B. R. N. S.). Mere exaggeration of language on a lawful occasion is not evidence of malice (*Spill* v. *Maule*, L. R. 4 Ex. 232). In this case Coleridge, C.J., held the occasion being privileged, the presumption was in favour of the defendant, and of the absence of malice, and therefore there must be evidence of actual malice. In *Hesketh* v. *Brindle* (Q. B. D. 4 T. L. R.), on the question of privilege, Manisty, J., following his own decision in *Adams* v. *Coleridge*, held that where there was a privileged occasion there must be evidence of actual malice. The present case was a letter *primâ facie* libellous, but written to the secretary

of a railway in answer to an inquiry on a subject, and it was therefore written on a privileged occasion. The occasion was clearly privileged, and it was for the plaintiff to prove actual malice (*Taylor* v. *Hawkins*, 16 Q. B. D.), that is, that it was written from personal spite and ill-will.

In the case of *Munster* v. *Lamb* (11 Q. B. D. 588) the principles of protection afforded statements made by certain parties on occasions of privilege were most fully reviewed, and, as it is the most recent and instructive case on the subject, a further reference to it is necessary. It was there held that no action will lie against an advocate for defamatory words spoken by him with reference to and in course of any inquiry before any judicial tribunal or recognised Court, and this immunity stretched to hold harmless the utterer, no matter how unjustifiable, malicious, impertinent, inexcusable, unnecessary and wanton were his remarks. Cases bearing on the point of privilege are instructive, and the most important are the following :—*Dawkins* v. *Lord Rokeby* (L. R. 8 Q. B. 255; 7 H. L. 744); *R.* v. *Skinner* (1 Lofft. 55), the oldest reported case probably on the subject; *Flint* v. *Pike* (4 B. & C. 473); *Hodyson* v. *Scarlett* (1 B. & A. 232); *Harman* v. *Netherclift* (1 C. P. D. 450); *Butt* v. *Jackson* (10 Ir. L. R. 120); *Higginson* v. *Flaherty* (4 Ir. C. L. R. N. S. 125); *Kennedy* v. *Hilliard* (10 Ir. C. L. R. 192); *Ex parte Pater* (5 B. & S.); *Scott* v. *Stansfield* (L. R. 3 Ex. 220); *Thomas* v. *Churton* (2 B. & S. 475); *Miller* v. *Hope* (2 Shaw, App. C. 125); *Allardice* v. *Robertson* (1 Dow & Cl. 495); *Kendillon* v. *Maltby* (1 Car. & M. 402); *Bevis* v. *Smith* (18 C. B. 126.) In *Dawkins* v. *Rokeby* (*supra*) Chief Baron Kelly said "that the authorities are clear, uniform, and conclusive, that no action for libel or slander lies, whether against judges,

counsel, witnesses, or parties for words spoken in the ordinary course of any proceeding before any Court or tribunal recognised by law." In *Goffin* v. *Donnelly* (6 Q. B. D. 307) to an action for slander defendant pleaded that the statements were made as witness before a Committee of the House of Commons, and it was held that statements so made were privileged, and that no action lay. In the case of *R.* v. *Warnsborough* a conviction of a person was posted at a railway station. Defendant pleaded not guilty, and in the alternative that it was for the public benefit (under 6 & 7 Vict.), but Huddleston, B. refused to receive evidence of plaintiff's innocence, and left it to jury if statement was true, in fact, holding that it was for them to decide if it was for public benefit, following the ruling in case of *Biggs* v. *Great Eastern Railway Co.* (L. T. R. 18 N. S. 482) as against a contrary decision in *Bamford* v. *Turnley* (3 B. & S. 84). He then held there was no case, and directed a verdict for defendant (4 T. L. R. 520). In *Williams* v. *Smith and another* (*ibid.* 674) the defendant copied a judgment list from Stubbs, but, as at the time of its publication it was satisfied, the jury found for plaintiff, and in an appeal it was affirmed on the ground that it was not a complete publication as at the time the judgment was satisfied, following decision in *Fleming* v. *Norton* (1 C. & F. 12) that the publication is not *per se* actionable, but if the publication was injurious and libellous that was not material. Cases on the subject are principally *Biggs* v. *Great Eastern Railway Co.* (18 L. J. 482); *Alexander* v. *North Eastern Railway Co.* (6 B. & S. R. 344); *McNally* v. *Oldham* (16 Ir. C. L. R. 209), where it was decided that, as the entry conveyed the impression that the judgment was unsatisfied it was libellous, and it was for the jury); *Cosgrove* v. *Trade Protection Co.* (8 Ir. C. L. 349). In

Waller v. *Loch* (7 Q. B. D. 619) a person interested herself in obtaining subscriptions for the relief of the plaintiff, a lady in distressed circumstances. Another person was also interested in same case and applied to the secretary of a charitable organisation for information respecting distressed women, and sent the report so obtained to the other party also interested. In an action for libel against the secretary his communication as between interested parties was held privileged. In consequence of the representation plaintiff failed to get certain sums of money intended for a distressed person. Similar cases where the same principle is recognised are *Martin* v. *Strong* (5 Ad. & E. 535); *Kine* v. *Sewell* (3 M. & W. 297); *Botterill* v. *Whytehead* (41 L. T. N. S. 588); *Harrison* v. *Bush* (5 E. & B. 344); *Davies* v. *Snead* (L. R. 5 Q. B. 608). Where the occasion is privileged it is for the plaintiff to establish that the statements complained of were made from an indirect motive, such as anger or with a knowledge that they were true or false, and not for the reason which would otherwise render them privileged. If the defendant made statements in the *bonâ fide* belief that they were true, he will not lose his protection, although he had no reasonable grounds for his belief (*Clark* v. *Molyneux*, 3 Q. B. D. 237). Also *Lister* v. *Perryman* (L. R. 4 H. L. 521); *Harrison* v. *Bush* (*supra*); *Pitt* v. *Donovan* (1 M. & S. 639); *Bromage* v. *Prosser* (4 B. & C. 247); *Wright* v. *Woodgate* (2 C. M. & R. 578); *Whiteley* v. *Adams* (33 L. J. C. P. 89). It was decided in an Irish case, *Dillon* v. *Balfour* (20 L. R. Ir. 600) that words spoken by a Member of Parliament in Parliament are absolutely privileged, and that the Court had no jurisdiction to entertain an action in respect to them, and will upon motion set aside the writ of summons and statement of claim in such contemplated action. It may be well to add that in

Robson v. *Worswick* (38 Ch. D. 371), it was held that a transcript of shorthand notes of proceedings in open Court is not privileged as distinguished from *Norton* v. *Defries* (8 Q. B. D. 508).

Every report of proceedings in Parliament (*Stockdale* v. *Hansard*, 9 A. & E. 1) and in a public Court now, by the Acts of 1881–8 is privileged, whether it be a matter over which the Court has jurisdiction or is one which it does not finally dispose of, but sends on to a higher tribunal, such as preliminary inquiries before magistrates when they either commit for trial or discharge the accused. This principle is very clearly explained in the judgment of Cockburn, C.J., in the authoritative case of *Wason* v. *Walter* (L. R. 4 Q. B. 73). "The immunity," said that able judge, "in respect of the proceedings of courts of justice rests upon a twofold ground. In the English law of libel malice is said to be the gist of an action for defamation. And though it is true that by malice, as necessary to give a cause of action in respect of a defamatory statement, legal and not actual malice is meant, while by legal malice, as explained by Bayley, J., in *Bromage* v. *Prosser* (1 B. & C. 255), is meant no more than the wrongful intention which the law always presumes as accompanying a wrongful act without proof of malice in fact, yet the assumption of law may be rebutted by the circumstances under which the defamatory matter has been uttered or published, and if this should be the case, though the character of the party concerned may have suffered, no right of action will arise." The rule, says Campbell, C.J., in the case of *Taylor* v. *Hawkins* (16 Q. B. 308) "is that the occasion is privileged, and the plaintiff must then, if he can, give evidence of malice. It is thus that in the case of reports of proceedings of courts of justice, though indi-

viduals may occasionally suffer from them, yet as they are published without reference to the individuals concerned, but solely to afford information to the public and for the benefit of society, the presumption of malice is rebutted, and such publications are held to be privileged. The broad principle on which this is an exception to the general law of libel is that the advantage to the community from publicity being given to the proceedings of courts of justice is so great that the occasional inconvenience to individuals arising from it must yield to the general good." This is in terse and weighty language the doctrine which protects law reports, and the tendency has been since in decisions, and by the recent Act, to extend the salutary privilege of exemption to any fair report of a public meeting. The same views were previously given expression to by Lord Campbell in the case of *Davison* v. *Duncan* (7 E. & B. 229), when he said, "A fair account of what takes place in a court of justice is privileged. The reason is that the balance of public benefit from publicity is great. It is of great consequence that the public should know what takes place in Court, and the proceedings are under the control of the judges. The inconvenience, therefore, arising from the chance of injury to private character is infinitesimally small as compared to the convenience of publicity." And Wightman, J., said in the same case: "The only foundation for the exception is the superior benefit of the publicity of judicial proceedings which counterbalances the injury to individuals, though it at times may be great." This recognition of the right to publish reports of proceedings is of modern growth. Till a comparatively recent time the sanction of the judges was thought necessary even for the publication of the decisions of their Courts upon points

of law. The true criterion of the privilege is not whether the report was or was not *ex parte*, but whether it was "a fair and honest report of what had taken place, published simply with a view to the information of the public," and innocent of all intention to do injury to the reputation of any party affected. A garbled or partial report or of detached parts of proceedings published with the intent to injure an individual will equally be disentitled to protection. The long line of decisions upon this point uphold this doctrine, and by the same principles is immunity sought for the fair and honest reports of all public proceedings. As to the privilege attaching to the words at a trial of judge, counsel, jury or witness, the principle is clearly seen in the decisions in *Seaman* v. *Netherclift* (1 C. P. D. 540); *Jackson* v. *Hofferton* (16 C. B. N. S. 821); *Stace* v. *Griffiths* (L. R. 2 C. P. 420); *Kennedy* v. *Hilliard* (10 Ir. C. L. 209), cited in *Munster* v. *Lamb* (C.A.) (11 Q. B. D. p. 604).

The most recent case under cognisance of the Courts perhaps best illustrates the principle. A report was published in the *Times* of certain slanderous statements made at a public meeting by a member of a board against an officer, which being true led to his dismissal. He claimed as against the paper, alleging dismissal as special damages. Coleridge, C.J., said that privilege when it exists, and is not exceeded or abused, should be upheld, and if, in any case in which defamatory statements have been made, malice is to be presumed and the privilege taken away unless the truth is proved, that would be to take away privilege altogether (*Stott* v. *Evans*, Q. B. D., 3 T. L. R. 694).

A report must be an exact representation of what occurred, and the freer it is from any personal remarks the better. Very often presumptuous reporters assume

the unequal task of advising as to the course of procedure, stating what might be adduced, for instance, as evidence at a trial. Such assumptions are very dangerous, and in the case of *R.* v. *Gray* (26 L. J. R. 663) a reporter was fined 50*l.* for adding to his report of proceedings before a coroner a remark that "from inquiries made by our reporter it appears that," &c., the fact being he made no inquiries, but simply copied an affidavit not produced at the inquest.

The further danger of captious headings to otherwise fair reports was seen in the case of the *Observer* newspaper (mentioned by Mr. Odgers), where an account of legal proceedings was headed "Shameful Conduct of an Attorney." The attorney recovered damages, and in another instance where the paragraph was introduced by the special introduction "How Lawyer B. treats his Clients." The Court held that this amounted to a general charge of ill-treatment, and defendant had to pay the costs of the action and apologise.

As to the privilege attaching to a report of speeches in Parliament, even the Bill of Rights absolutely protected anything said in either House, but this protection does not extend to anything said outside (*Ex parte Wason*, L. R. 4 Q. B. 673; *R.* v. *Williams*, 2 Shower, 471; Comb. 18; *Stockdale* v. *Hansard*, 2 Moo. & Rob. 9; 7 C. & P. 731; 9 A. & E. 123). Petitions to Parliament are absolutely privileged (*Lake* v. *King*, 1 Saun. 131; 1 Lev. 240; *Kane* v. *Mulvanny*, Ir. R. 2 C. L. 402). As to general parliamentary privilege the leading cases are *Davison* v. *Duncan* (7 E. & B. 233); *Wason* v. *Walter* (L. R. 4 Q. B. 95); *Goffin* v. *Donnelly* (6 Q. B. 207); *Proctor* v. *Webster* (16 Q. B. D. 112). In *R.* v. *Creevy* Lord Ellenborough held that the publication of a single speech was like the part publication of the proceedings at a Court, and therefore unprotected, as

one such speech could not be held to be a proceeding in Parliament. In *R.* v. *Lord Abingdon* (1 Esp. 226) the same decision was given. In *Lake* v. *King* (1 Saund. 131) the publication of a scandalous petition was held not libellous; and in *Stockdale* v. *Hansard* (9 Ad. & E.) it was held the House cannot legalise the publication of a libel by ordering it to be printed, while in *Dawson* v. *Duncan* (7 E. & B. 229) the Court held that, as the privilege attaching to the report of the proceedings of a Court of Justice did not extend to what was said at a public meeting, so what was said within the House did not protect such statements when repeated outside.

An important distinction must be borne in mind. If the report is communicated, not reported in the usual way, the privilege does not extend. In *Martin* v. *Strong* (5 A. & E. 535), the communication of such matter to the printer was held to destroy all privilege. A request to publish or report a libel makes the person liable civilly (*Parkes* v. *Prescott*, L. R. 4 Ex. 169). Even a true report of a meeting is not protected if so supplied (*Stevens* v. *Sampson*, 5 Ex. D. 53). A report appearing in a newspaper is often subsequently published in a pamphlet, or perhaps so in the first instance. There is really no great distinction in these cases. If a fair abstract of the trial, it is in either instance, privileged; but where there is any evidence of unfairness or partiality which a jury could find as such it is otherwise, and the question of its general fairness must go to them to decide (*Wason* v. *Walter*, 38 L. J. R. Q. B. 34), whether independently of its fairness it was accurate. Mellish, J., in *Milissich* v. *Lloyds* (L. J. 46 C. P. 44), said, that he did not think there was any difference in privilege between a newspaper and a pamphlet unless some question of malice be raised.

In *Lewis* v. *Levy* (2 B. & E. 557), the jury, to determine the accuracy, actually compared the shorthand notes with the published report, and it seems settled practice that it is their exclusive province to do so, and that the Court is not to draw inferences itself, but to point out clearly that the jury are to find whether or not the report is a fair one, not as regards the particular defendant, but whether it is a fair report of what took place at the trial. If the report is incomplete, it is *primâ facie* unfair; but that presumption is to be rebutted (*Flint* v. *Pike*, 4 B. & C. 473; *Saunders* v. *Mills*, 6 Bing. 213). In *Purcell* v. *Sowler* (*supra*) the paper published an *ex parte* statement made at a meeting of a board of guardians, and a conversation thereon defamatory to the plaintiff, who was medical officer of the district. In this case it was held that though the matter was of public interest, and the report a fair one, published without malice, yet the occasion was not privileged, for a meeting of a board of guardians is not necessarily a public meeting, and if public is not of such importance as to bring the publication of its debates under the rule which applies to judicial proceedings and debates in Parliament. The manifest injustice of this decision led to the passing of the Act protecting such reports. Cockburn, C.J., in this case held that poor law matter was a matter of national concern, as a branch of the national Government is also a matter of public concern in the special local district where the Poor Law is locally administered, and that the conduct of a medical officer may be of vast importance, since it is of the greatest importance that he properly discharges his duty. Of reports generally the issue is for the jury to decide as to their fairness or otherwise (*Turner* v. *Sullivan*, 6 L. T. 130), and if honest, even if incorrect, such may be pleaded in mitigation of

damages (*Smith* v. *Scott*, 2 C. & K. 588). In *Wason* v. *Walter* (L. R. 4 Q. B. 72), the *Times* published a report of a debate in the House of Lords, and it contained defamatory references to the plaintiff, yet the verdict was for the defendant. In the Irish case of *Kane and Mulvanny* (2 Ir. C. L. 402), followed in England, it was ruled that a report of a Committee of either House is privileged. An ordinary report of even an *ex parte* application is safe if the Court is open (*Usill* v. *Hales and others* (9 C. P. D. 319), but where the inquiry is private it is not (*Myers* v. *Defries*, *Times*, July 1877); where the Court has no jurisdiction and tries a case the report is protected (*Buckley* v. *Woods*, 4 Rep. 14a; *Lake* v. *King*, 1 Saund. 131; *Forman* v. *Ives*, 5 B. & Ald. 642). Some doubt existed as to whether a case could be reported if not finally disposed of; but according to a decision of Lefroy, C.J., in *R.* v. *Gray* (10 Cox's C. C.) followed in England, it was held that so long as the report was fair and accurate, and of proceedings held in public, it was protected on the principle laid down by Campbell, C.J., in *Lewis* v. *Levy* (E. B. & E. 560), that the law upon such a subject must bend to the approved usages of society, though still resting upon the same principle, that what is hurtful and indicates malice should be punished, and that what is beneficial and *bonâ fide* should be protected." In *Usill* v. *Hales* (9 C. P. D. 324), Coleridge, C.J., thus spoke of the growth of the law: "The law of libel has in many respects only gradually developed itself into anything like a satisfactory and settled form. The full liberty of public writers to comment on the conduct and motives of public men has only in very recent times been recognised." Here he left it to the jury if the report was a fair and impartial report, and, they so finding, a verdict was entered for the defendant. In reporting cases generally notwith-

standing these protections, it used to be a safe practice to give the judge's charge, for it is generally a fair *résumé* of the evidence on both sides, and it savours of partiality to give the opening or one-sided statements without the converse (*Milissich* v. *Lloyds*, 46 L. J. C. P. 404; *Chalmers* v. *Payne*, 2 C. M. & R. 156; *Pinero* v. *Goodlake*, 15 L. T. 676; *Ashmore* v. *Brothwick*, 49 L. P. 792). This safe rule was upset by the decision in the recent case of *McDougall* v. *Knight & Co.* (*supra*) in the House of Lords, already referred to, and which destroys the presumption of protection to such a publication. The report need not be verbatim in any instance, only "a substantially fair account of what took place" (*Andrews* v. *Chapman*, 3 C. & K. 289). In *Milissich* v. *Lloyds* (*supra*) Mellish, L.J., held, and the same ruling was followed in *Turner* v. *Sullivan* (6 L. J.) by Byles, J., that it is enough to print a "fair abstract." Campbell, C.J., in *Andrews* v. *Chapman*, laid down a very good rule for observance in reports, which neither time nor legislation has weakened. "If comments are made, they should be," he says, "not as part of the report, which should be confined to what takes place in Court, and the report and comment should be kept separate."

Remarks upon the conduct of witnesses, descriptive writing, captious headlines, or reports interlarded with personalities or gossip are dangerous, and may at once destroy the usual protection otherwise afforded.

In *Williams* v. *Smith*, a question arose as to whether entries in a trade journal were privileged. The jury found for plaintiffs. On a motion for a new trial, Pollock, B., held there no doubt was no malice proved or shewn, but that did not matter if the statements were libellous and injurious. The impression conveyed by the entry published was that the judgment obtained

against plaintiff was unsatisfied, which was not a fact, and the finding of the jury could not be disturbed (58 L. J. Q. B. 21, 37 W. R. 93).

In *Fleming* v. *Norton* (1 C. & F. R.) the publication of a black list was protected. In *Biggs* v. *Great Eastern Co.* (18 L. J. 482), and *Alexander* v. *North Eastern Co.* (6 B. & S. 340), the publication by railway companies of convictions of persons for offences were, if true, not actionable. In *McNally* v. *Oldham* (16 Ir. C. L. R. 298), if an entry of a judgment published would convey the impression that it was unsatisfied, and it was untrue, the publication was libellous. The ruling in *Fleming* v. *Norton*, above cited, in House of Lords guides all these decisions, but the republication of anything from a public register is not *per se* actionable unless untrue, and this principle was followed in *Cosgrove* v. *The Trade Protection Co.* (Ir. R. 8 C. L. 349).

The jury may infer malice from any remarkable omissions (*Duncan* v. *Thwaites*, 3 B. & C. 556). There often is allowed in evidence matter illegal and foreign to the subject matter; still, if permitted by the Court, its reporting is protected (*Ryalls* v. *Leader*, L. R. 1 Ex. 296). There is an inherent power in every Court to prohibit any reports of its proceedings. An infringement of that prohibition on the part of a newspaper destroys its privilege (*Brook* v. *Evans*, 29 L. J. Ch. 616; *R.* v. *Clement*, 4 B. & Al. 218).

Privilege does not extend to the publication of any blasphemous or obscene matter in any event. In fine, privilege has been aptly described by Blackburn, L.J., as this, "that a person stands in such a relation to the facts of a case that he is justified in saying or writing what would be slanderous or libellous in another."

These leading decisions indicate what the law was

before the late Act passed, and it is very questionable if it has in the main in any degree enlarged these privileges of the press. There is a species of privileged communication which, although it generally comes under another head, yet perhaps requires a special, even cursory, mention. These are characters *bonâ fide* given to servants. No matter how defamatory or untrue, they are held privileged, unless given with express malice, or where a person volunteers to make an injurious statement (*Fountain* v. *Boodle*, 3 Q. B. 15; *Gardner* v. *Slade*, 13 Q. B. 796; *Rogers* v. *Clifton*, 3 B. & P. 587; *Coxhead* v. *Richards*, 2 C. B. 597—in this case doubt was cast on whether a volunteered statement is so;—*Bennett* v. *Deacon*, 2 C. B. 569). A master or a person in the capacity of an employer may charge a servant or employee with any supposed misconduct before a third party, unless he sought such opportunity and acted in bad faith (*Somerville* v. *Hawkins*, 10 C. B. 583; *Taylor* v. *Hawkins*, 16 Q. B. 38; *Toogood* v. *Spyring*, 1 Cr. M. & R. 181; *Padmore* v. *Laurence*, 11 Ad. & E. 380; *Manby* v. *Witt*, 18 C. B. 544). A person submitted a libellous advertisement to a lawyer for advice before its publication. It was contended that such was not a professional communication made for the purposes of legal proceedings and therefore protected; but in *re Lowden* v. *Blaker*, (5 T. L. R.) it was held by Denman, J., that it was privileged, following the decision in *Minet* v. *Morgan* (L. R. 3 Ch. 361). See *Pearse* v. *Pearse* and *Mauser* v. *Dix* (3 Ch. 361).

State Papers and other Privileged Documents.

It frequently happens in the course of a trial for libel, or in previous preliminary stages, that documents are referred to or sought to be relied upon which are

privileged from production as being State papers which it is for the public interest not to publish. The principal cases on the subject are these:—*The Bellerophon* (44 L. J. Adm.), where the report of a naval officer was so protected; *Kearsley* v. *Phillips* (10 Q. B. D. 36); the *Rajah of Coorg* v. *East India Co.* (25 L. J. Ch. 345); *Smith* v. *East India Co.* (1 Phill. 50); *Home* v. *Bentinck* (2 B. & B. 130); *McElveney* v. *Connellan* (17 Ir. C. L. R. 55); *Beatson* v. *Skene* (5 H. & N. 838); *Kain and Farrer* (37 L. T. 469); *Stace & Griffith* (L. R. 2 C. P. 420); and the old one of *Pope* v. *Curll* (2 Atk. 348), where Lord Hardwicke restrained Curll, the printer, from publishing letters written to him by Alexander Pope, holding the property in the letters remained in the poet. In *Home* v. *Bentinck* (*supra*) the principle was clearly explained by Abbott, C.J., and in *Smith* v. *East India Co.* (*supra*) Lord Lyndhurst said the effect of producing private official reports would be to restrain the necessary freedom of such communications, and to render them even more guarded, cautious and reserved. In *Beatson* v. *Skene* (5 H. & N. 838), in an action for libel and slander, Pollock, C.B., ruled that the question of the effect of the production of the evidence must be determined, not by the judge, but by the head of the state department, and in *Anderson* v. *Hamilton* (2 B. & B. 130) Lord Ellenborough refused to admit in evidence a correspondence between a colonial secretary and the governor of a colony, although the colonial secretary was present and raised no objection at the trial. In *McElveney* v. *Connellan* a report of an inspector-general of prisons was held privileged on the grounds of the public interest requiring it. In *Dawkins* v. *Lord Rokeby* (L. R. 8 Q. B. 255) Blackburn, J., directed a verdict for the defendant because

such proceedings were absolutely privileged — the proceedings being statements made to the Commander-in-chief in the report of a court of inquiry into the conduct of an officer, and the Court of Appeal held that it was his bounden duty to have so interposed and prevented the admission of such evidence. In *Dickson* v. *Lord Wilton* (1 F. & F. 419) Campbell, C.J., compelled a clerk in the War Office, who attended, to produce the letters written to an inferior officer by his commanding officer concerning the discipline of the regiment. In *Kain* v. *Farrer* (37 L. T. 469) certain documents were ordered to be produced, as the affidavit was insufficient. In *Hennessy* v. *Wright* (22 Q. B. D. 509) an action brought against the *Times* by Pope Hennessy, a colonial governor, for its having stated that he doctored some reports of the proceedings of the Legislative Council before sending them to the Colonial Secretary, on an application for a discovery of documents, the plaintiff in his affidavit objected to their production on the grounds of privilege and that the Secretary of State directed him not to produce or disclose them, and to object to their production in these proceedings on the ground of the interest of the State and public service. The Court thereupon refused to grant an order for their production, holding the documents privileged. And in an action against a railway company for work and materials it was ruled the defendants were bound to produce their engineer's report and correspondence: *Worthington* v. *Dublin, Wicklow, and Wexford Railway Co.* (22 L. R. Ir. 316).

CHAPTER XII.

THE RESPONSIBILITY OF THE VENDORS OF NEWSPAPERS—AN UNLAWFUL MEETING.

THE liability of vendors of newspapers is clearly defined. It has been held that a person making profit by the sale of a paper, as agent or otherwise, is liable if he knew it contained or was likely to contain, a libel (*R.* v. *Walter*, 3 Esp. 21; *R.* v. *Dodd*, 2 Sess. Cases 33; *Watts* v. *Fraser*, 7 C. & P 369; *R.* v. *Williams*, 26 Howell's State Trials; *R.* v. *Carlile*, 3 B. & A. 161; *Day* v. *Bream*, 2 M. & Rob. 54: *Hooper* v. *Truscott*, 2 Scott, 672). Lord Esher, in the case of *Emmens* v. *Pottle* (16 Q. B. D. 354), held that if the news agents had known what was in the paper, whether paid for it or not, they were liable. It was left to the jury to decide if they had such guilty knowledge or were innocent disseminators of a thing they were not bound to know was likely to contain a libel. If in the latter event they were so liable, common carriers would not be free. In the same case of *Emmens* v. *Pottle*, Bowen, L.J., made use of these remarkable words: "A newspaper is not like a fire; a man may carry it about without being supposed to know it will do injury. But I by no means intend to say that the vendor of a newspaper will not be responsible for a libel contained in it, if he knows or ought to know that the paper is one likely to contain a libel." The presumption in ordinary cases is that the vendor of a fairly conducted paper does not know

of the libel contained in it; but I should not be inclined to say his immunity is so complete in selling a paper notorious for its libellous attacks on persons, or if he exposes a placard calling atttention to the particular libel.

Every seller or circulator of a libellous book as of a newspaper is liable to an action, and there is no power to consolidate the causes as in the case of the publishers in newspapers of one and the same libel (see remarks on Consolidation of Actions, *infra*).

In the old case of *R.* v. *Cuthill* (27 S. T. 641) a classical bookseller was convicted of publishing a book he never read, nor even fancied was a political work, though Erskine, who defended, thought the jury should find for him if he could prove that his client was only negligent and inadvertent in the publication. The principle of the conviction has been since followed, and the provisions of 6 & 7 Vict. clearly shew that "a negligent publication by a bookseller, who is ignorant of its contents, is criminal"; but Stephen, J., held that a printer named Mertens, who printed and published a libel in a paper called the *Freiheit* (the libel being a eulogy on the Phœnix Park murders of 1882), was guilty, it being proved he set up the type, and the jury finding that he did not do so mechanically, but with an intelligent perception of the meaning of what he was printing, the printer was sentenced to several months imprisonment.

Where a party does not know the contents of a newspaper which he circulates, though *primâ facie* liable, he can show his ignorance was not due to negligence (*Emmens* v. *Pottle*, 16 Q. B. D. 354). In his judgment Lord Esher said, "I agree that the defendants are *primâ facie* liable. They have handed to other people a newspaper in which there was a libel on the plaintiff. I am in-

clined to think that this called upon the defendants to shew some circumstances which absolve them from liability, not by way of privilege, but facts which shew that they did not publish the libel. If they had known what was in the paper, whether they were paid for circulating it or not, they would have published the libel and would have been liable for so doing. This I think cannot be doubted."

In the case of *Ex parte Brosnan* v. *Roche and others*, the Irish Queen's Bench Division held that the sentence of the magistrates on a newsvendor for selling *United Ireland*, a paper prohibited under special provisions of Crimes Act from sale in the town where defendant resided, was right, and that knowing the criminatory contents of the publication he was criminally liable for its dissemination. (Jan. 1889.)

An Unlawful Meeting.—The words of sect. 4 of Act of 1888 protect the report of a public meeting held for a lawful purpose. This not unnaturally suggests the converse, and makes it desirable to describe what is an unlawful meeting.

As defined by the Criminal Code Commission and their definition, though not yet law, most accurately represents the full meaning attachable to the word, they declare an unlawful meeting or assembly to be "an assembly of three or more persons who merely intend to carry out any common purpose, assemble in such a manner or so conduct themselves when assembled as to cause persons in the neighbourhood of such assembly to fear on reasonable grounds that the persons so assembled will disturb the peace tumultuously, or will by such assembly needlessly and without any reasonable occasion provoke other persons to disturb the peace tumultuously." It is needless to add that a

report of such a gathering can hardly claim the protection of the statute nor of the equally serious case where a lawful meeting becomes unlawful, by reason of the language used or the general character it assumes. A report of a meeting in furtherance of any object not recognised as lawful can claim no immunity, although the other conditions of the case may be fulfilled and it is for the public benefit that it be held. The Act now defines a public meeting to be for the purposes of the protection it affords reports of its proceedings:—"any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be restricted or general."

In Hawkins' *Pleas of the Crown* (C. 65, s. 9), an unlawful assembly is described as any meeting whatsoever of great numbers of people, with such circumstances of terror as cannot but endanger the public peace and raise fears and jealousies amongst Her Majesty's subjects." In *R.* v. *Vincent*, Alderson, B. describes any meeting held under such circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquillity and peace of the neighbourhood, as an unlawful assembly." And in *R.* v. *Hunt*, Bayley, J., decided that all persons assembling to sow sedition and bring into contempt the constitution, are an unlawful assembly" (3 Stark. N. P. 76). Also *R.* v. *Hughes* (4 C. & P. 372; 1 Hawk. C. 65, s. 5; Lamb, 178; Dalt. C. 137); *R.* v. *Phillips* (2 Mood. C. C. 252); *R.* v. *Fursey* (6 C. & P. 81).

However, into this question it is hardly necessary to go, as the general instinct will tell a person what meetings are lawful, and held for a lawful purpose, and the reports of which are protected under the Act of 1888.

CHAPTER XIV.

SUMMARY PROCEEDINGS.

By the Act of 1881, a magistrate may receive evidence at the summary trial of a libel as to its being for the public benefit, and as to the report being a fair and accurate one and published without malice, and if satisfied on these points he may deal summarily with the case and dismiss it.

The section (4) which treats of the matter runs as follows:—

"A Court of summary jurisdiction, upon the hearing of a charge against a proprietor, publisher or editor, or any person responsible for the publication of a newspaper for a libel published therein, may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true; and as to the report being fair and accurate, and published without malice, and as to any matter which, under this or any other Act, or otherwise might be given in evidence by way of defence by the person charged on his trial on indictment; and the Court, if of opinion after hearing such evidence that there is a strong and probable presumption that a jury on the trial would acquit the prisoner, may dismiss the case."

This clause protects the publisher of a newspaper, but not the writer of the libel as such, as it refers only to "printer, publisher, or any other person responsible for the publication of a newspaper." If the magistrate considers the case not made out, he may dismiss it,

and if he deem it trivial he can, at the election of the defendant, summarily try it and impose a fine not exceeding 50*l.* The prosecutor can, if so minded, claim to be bound over to prosecute (sect. 2 of the Vexatious Indictment Acts, 22 & 23 Vict. c. 17), and the magistrate is bound to take his recognisances and send forward the case; but, if the prosecution fails, the prosecutor, by sect. 2 of 30 & 31 Vict. c. 35, must pay all the costs of the proceedings.

This clause was chiefly introduced to define the law as to summary proceedings. In the case of *R.* v. *Carden* (5 Q. B. D.), it was held that the magistrate had no power of dealing with an offence under sect. 5 of 6 & 7 Vict., and that he had no jurisdiction to receive evidence of the truth of the libel. This recent enactment now settles the point and confers that power upon him.

CHAPTER XV.

CONSOLIDATION OF ACTIONS (SECTS. 5, 6).

Up to the passing of the Act of last session—the 12th section of which now rightly determines the matter—the several publishers and proprietors of newspapers were often without any redress, subjected to grave and serious annoyance and loss from having to pay heavy damages in each particular instance, as if a separate cause, for the inadvertent insertion of the same news paragraph defamatory of any person, as its appearance in each journal was held to be a separate act of publication. This injustice was well exemplified in an unreported case of *Alymer* v. *Gray*, in the Irish Courts, where damages were recovered of the proprietor of the *Freeman's Journal* by the lady in question for an undoubted libel, but as undoubtedly unmalicious a libel as could possibly be conceived. There it appeared the plaintiff had recovered large sums from various other papers for the very same libel (a mere misprint), and yet such was the state of the law that the damages so recovered could not be pleaded in mitigation of further damages, nor could evidence be given of such previous verdicts, but each case was tried as if it were an independent, original, and solitary action. The libellous paragraph was supplied by a news agency to all these journals so amerced and was a report of a divorce suit, and yet, in every case in which proceedings were instituted, damages had to be given, although the number of journals so supplied was very large, and the aggregate

damages consequently disproportionate to the offence. Two typical cases also occurred in England, those of *Tucker* v. *Lawson* (2 T. L. R. 593), and *Colledge* v. *Pike* (56 L. T. 124), which illustrated this same grievance and called for the remedy just provided. As the law now properly stands, it will be possible to join all defendants "in the same or substantially the same libel," and the judge can apportion the aggregate damages accordingly, and by sect. 6 evidence can now be given that damages have been already awarded in another action in respect to the same subject matter. This refers to newspapers exclusively, but why it should not be extended to the publishers of all libels it is difficult to see. For instance, it may be still possible, as was often done, for a person to proceed against the several vendors of the libellous paper, and in case of books the several circulating mediums by which they were distributed. It cannot be denied that in these two clauses a wholesome, necessary, and proper protection is afforded the press without any corresponding deprivation of any fair right in the public. A man goes to law to establish or protect his reputation, not to make money by any slur cast upon it, and, if he succeeds after a full trial in establishing his character, the damages so awarded him will be a sufficient vindication; while his failure will be equally conclusive, and there is no reason why for the same cause of action he should mulct the proprietors of newspapers in his illusory defence of a reputation which was not attacked unduly, or if attacked was a fair and proper subject for such an attack. In *Colledge* v. *Pike* (above referred to) the plaintiff brought an action for libel, and this happened to be one of *sixteen* actions actually instituted for one and the same libel. There was an application made to the judge to consolidate, but he refused to stay all fur-

ther proceedings as asked until a verdict had been got in one action by which the other defendants would be bound. On appeal the Court declined to consolidate these sixteen actions, on the grounds that, though the libel was identically the same in each case, still, the publications and circumstances attending them being different, the causes of action in the several cases were different. The judge made an order, however, that all further proceedings in these sixteen actions, save one selected by the plaintiff, be stayed pending the trial of the selected action, the defendant therein having seven days to deliver his defence after notice; and, further, that the plaintiff, if dissatisfied with the verdict in that case, could select another, giving notice for defence as before, and defendants in the other actions binding themselves by their counsel to the verdict in said selected action, and that by its measure of damages judgment should be entered up against them severally. It was probably the injustice shown to exist by this case that brought about the necessary and proper alteration effected in the law by the Act of 1888.

Clauses 5 and 6, effecting these purposes, run as follow:—

"5. It shall be competent for a judge or the Court, upon an application by or on behalf of two or more defendants in actions in respect to the same or substantially the same libel brought by one and the same person, to make an order for the consolidation of such actions so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendant in any new actions instituted in respect to the same or substantially the same libel shall also be entitled to "be joined in a common action upon a joint application being made by such new defendants, and the defendant in the actions

already consolidated." In a consolidated action under the section the jury shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately, and if the jury shall have found a verdict against the defendant or defendants in more than one of the actions so consolidated they shall proceed to apportion the amount of damages which they shall have so found between and against the said last-mentioned defendants, and the judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he shall deem just for the apportionment of such costs between and against such defendants.

"6. At the trial of an action for libel in any newspaper, the defendant shall be at liberty to give in evidence in mitigation of damages that the plaintiff has already recovered (or has brought actions for) damages, or has received, or agreed to receive, compensation in respect of a libel or libels to the same purport or effect as the libel for which such action has been brought."

Henceforth, therefore, in a number of libel actions arising out of the same subject matter, although a verdict will be returned in each case as so consolidated (for in law each paper was liable for a separate and distinct act of publication), it will be the province of the jury to assess the aggregate damages and for the judge to apportion the costs among the papers as he thinks fit and proper — thus probably making the original and first publishers of the libel pay more than the mere copiers, or making papers that gave undue publicity suffer heavier penalties as contrasted with those which simply published the matter as an

ordinary item of news without note or comment. Provincial papers will find a great protection in this clause, for they are often led into trouble by merely copying paragraphs from the metropolitan journals, and of course an effectual check will be put upon vexatious actions, for, once a verdict upon an issue is had and obtained, it will be rather difficult to induce another jury to supplement the finding and give greater damages for the injured reputation. Another advantage in this consolidation will be the consolidation of costs—an item which weighs so heavily on small struggling journalists. The protection is particularly useful to newspapers which may in the course of business publish a libellous paragraph supplied by a news agency or common correspondent, or which may happen to copy the defamatory matter one from another.

Indictment for Obscene Libel.

Sect. 7, dealing with the publication of obscene matter, it is now conceded was passed to meet the defect exposed in the case of *R.* v. *Bradlaugh*, tried in 1887, where there was a failure of justice owing to the flaw in the indictment, as it did not set out the obscene passages which were the subject of the prosecution. It is now provided, that it shall not be necessary to do so, but referring particularly to the chapter, page and line, that contains the criminatory matter, then simply deposit the book, paper, or document. It must be remembered that any report of such proceedings, which gives the passages however set out, will not enjoy the privilege attaching to reports of judicial proceedings (*Steele* v. *Brannan*, L. R. 7, and sect. 3). The clause specifying the procedure as to an indictment now runs thus:—

Sect. 7.—"It shall not be necessary to set out, in any indictment or other judicial proceeding instituted against the publisher of any obscene libel, the obscene passages, but it shall be sufficient to deposit the book, newspaper, or other documents containing the alleged libel, with the indictment or other judicial proceeding, together with particulars shewing precisely by reference to pages, columns, and lines, in what part of the book, newspaper, or other document, the alleged libel is to be found, and such particulars shall be deemed to form part of the record, and all proceedings may be taken thereon as though the passages complained of had been set out in the indictment or judicial proceeding."

The Fiat of the Public Prosecutor, &c. Substituted Order of Judge (Sect. 8).

The clause in the Act of 1881, which required, before any criminal proceeding could be instituted against a newspaper, the *fiat* of the Public Prosecutor, that is the Solicitor for the Treasury in England, or that of the Attorney-General in Ireland, has been properly repealed, and a very decided change for the better substituted instead. Henceforward, before taking any criminal proceeding for libel, an order from a Judge in Chambers must be had and obtained, and this must not be *ex parte*, as the application to the other functionary was, but upon notice to the defendant, who can appear by counsel and resist the application; and it is evident, unless a very good *primâ facie* case is made out, such an order will not be obtained. In this an obvious advantage results to the press, and a proper protection is afforded. So far, an application to the Public Prosecutor or Attorney-General, as the

case might be, was final and decisive, and in either event only one side of the case was under his cognisance, and an arbitrary, irresponsible power conferred upon a person who should never have been entrusted with it under any circumstances. The amending clause now runs :—

Sect. 8.—"Section 8 of the 44 & 45 Vict. c. 60, is hereby repealed, and instead thereof be it enacted, that no criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper, for any libel published therein, without the order of a Judge at Chambers being first had and obtained. Such application shall be made on notice to the person accused, who shall have an opportunity of being heard against such application."

It is a disputable point which, before long, is sure to be settled by authoritative decision, whether an aggrieved party can appeal from the order of a judge which is now, by this section of the Libel Amendment Act, substituted for the fiat of the Director of Public Prosecutions in England or Attorney-General in Ireland. The 49th and 50th sections of the Judicature (England) Act deal with the subject. The 54th section of the Judicature (Ireland) Act exactly corresponding to these runs as follows: "Every order made by a Judge of the said High Court in chambers, except orders made in the exercise of his discretion as to costs in cases where, under the provisions of the next preceding section, a right of appeal is not expressly given, may be set aside or discharged upon notice by any Divisional Court or by the Judge sitting in Court, according to the course and practice of the Division of the High Court to which the particular cause or matter in which such order is made may be assigned, and no

appeal shall lie from any such order to set aside or discharge which no motion has been made, unless by special leave of the Judge by whom such order was made, or of the Court of Appeal."

WIFE GIVING EVIDENCE (SECT. 9).

A CHANGE in accordance with the recent tendency in the criminal law has been introduced by sect. 9, which makes the wife of a man charged with a criminal libel a competent but not compellable witness for the husband, or the husband a competent witness on behalf of the wife, if it should so happen she is the owner or publisher of the incriminated newspaper. In justification or excuse, it may be most essential that such proof should be given, and injustice might be caused if the old principle were strictly adhered to in such prosecutions. The clause is short and simple :—

9.—"Every person charged with the offence of libel, before any Court of criminal jurisdiction, and the husband or wife of the person so charged, shall be competent but not compellable witnesses in every hearing at every stage of such charge."

APPLICATION OF ACT (SECT. 10).

THE Act only applies in England, Wales, and Ireland, as did the previous Acts, and does not refer to Scotland (sect. 10).

THE TITLE OF THE ACT (SECT. 11).

THE Act is to be known as the Law of Libel Amendment Act, 1888 (sect. 11).

CHAPTER XVI.

TEXT OF THE ACT.

"WHEREAS it is expedient to amend the law of libel:—

"Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Interpretation.

"1. In the construction of this Act the word 'newspaper' shall have the same meaning as in the Newspaper Libel and Registration Act, 1881.

Repeal of 44 and 45 Vict. c. 60 s. 2.

"2. Section 2 of the Newspaper Libel and Registration Act, 1881, is hereby repealed.

Newspaper reports of proceedings in court privileged.

"3. A fair and accurate report in any newspaper of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter.

Newspaper reports of proceedings of public meetings and of certain bodies and persons privileged.

"4. A fair and accurate report published in any newspaper of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a vestry, town council, school board, board of guardians, board or local authority formed or constituted under the provisions of any Act of Parliament, or of any committee appointed by any of the above-mentioned bodies, or of any meeting of any commissioners authorised to act by letters patent, Act of Parliament, warrant under

the Royal Sign Manual, or other lawful warrant or authority, select committees of either House of Parliament, justices of the peace in quarter sessions assembled for administrative or deliberative purposes, and the publication at the request of any Government office or department, officer of state, commissioner of police, or chief constable of any notice or report issued by them for the information of the public, shall be privileged, unless it shall be proved that such report or publication was published or made maliciously: provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter: provided also, that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it shall be proved that the defendant has been requested to insert in the newspaper in which the report or other publication complained of appeared a reasonable letter or statement by way of contradiction or explanation of such report or other publication, and has refused or neglected to insert the same: provided further, that nothing in this section contained shall be deemed or construed to limit or abridge any privilege now by law existing, or to protect the publication of any matter not of public concern, and the publication of which is not for the public benefit.

"For the purposes of this section 'public meeting' shall mean any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

Consolidation of actions.

"5. It shall be competent for a judge or the Court, upon an application by or on behalf of two or more defendants in actions in respect to the same or substantially the same libel brought by one and the same

person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect to the same, or substantially the same, libel, shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

"In a consolidated action under this section the jury shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately; and, if the jury shall have found a verdict against the defendant or defendants in more than one of the actions so consolidated, they shall proceed to apportion the amount of damages which they shall have so found between and against the said last-mentioned defendants; and the judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he shall deem just for the apportionment of such costs between and against such defendants.

Power to defendant to give certain evidence in mitigation of damages.

"6. At the trial of an action for libel contained in any newspaper the defendant shall be at liberty to give in evidence in mitigation of damages that the plaintiff has already recovered (or has brought actions for) damages or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as the libel for which such action has been brought.

Obscene matter need not be set

"7. It shall not be necessary to set out in any indictment or other judicial proceeding instituted against the publisher of any obscene libel the obscene passages,

but it shall be sufficient to deposit the book, newspaper, or other document containing the alleged libel, with the indictment, or other judicial proceeding, together with particulars showing precisely by reference to pages, columns, and lines in what part of the book, newspaper, or other document the alleged libel is to be found, and such particulars shall be deemed to form part of the record, and all proceedings may be taken thereon as though the passages complained of had been set out in the indictment or judicial proceeding. forth in indictment or other judicial proceeding.

"8. Section three of the forty-fourth and forty-fifth Victoria, chapter sixty, is hereby repealed, and instead thereof be it enacted that no criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein without the order of a Judge at Chambers being first had and obtained. Repeal of 44 & 45 Vict. c. 60, s. 3. Order of judge required for prosecution of newspaper proprietor, &c.

"Such application shall be made on notice to the person accused, who shall have an opportunity of being heard against such application.

"9. Every person charged with the offence of libel before any Court of criminal jurisdiction, and the husband or wife of the person so charged, shall be competent, but not compellable, witnesses on every hearing at every stage of such charge. Person proceeded against criminally a competent witness.

"10. This Act shall not apply to Scotland. Extent of Act.

"11. This Act may be cited as the Law of Libel Amendment Act, 1888." Short title.

CHAPTER XVII.

THE REGISTRATION OF NEWSPAPERS.

THE most important provisions of the Act of 1881 (44 & 45 Vict. c. 60), the Newspaper Libel and Registration Act, 1881, which must be read with the Act of 1888, relate to the registration of newspapers. The printer and publisher are required, before the 31st of July of every year, to forward to the office of the Registrar of Joint Stock Companies, in Somerset House, London, or to the similar office in the Custom House, Dublin, if for Irish papers, a return, giving the particulars of the publication required by the statute. These returns are subsequently filed in these departments, but the official arrangements for such filing, as was seen in a case in the Irish Exchequer Courts, of *R* v. *Harrington*, heard last year, are most primitive, if not imperfect, being nothing more than the binding together in one book of the various returns. This binding together was held to be a compliance with the provision requiring a register to be kept. The Act, indeed, is very loose-worded and defective: the expression, "weekly or oftener, or at intervals not exceeding twenty-six days," as describing a newspaper, being very vague. But outside such definition very little doubt exists as to what is a newspaper; yet there may arise some difficulties under the Act, and the ingenuity of publishers can be trusted to devise a print that may not be a newspaper. Another and a serious defect in this measure was the omission to provide for a compulsory

registration between the beginning of August and the following July, so that a paper started within those eleven months, or any change in the proprietorship of an existing newspaper, need not be registered, thus depriving the Act of its most valuable utility, for, except that, upon a certain day in July such a proprietorship or publishership existed, the register cannot conclusively go. Another drawback equally fatal is, that under the provisions of the Act there is no power to register a limited company, and as many newspapers are now carried on as such the Act, as it applies to them, is practically useless. Baron Pollock described the Act "as a sort of settlement between the public on the one hand, and newspaper proprietors on the other. On the one hand, proprietors of newspapers are to be registered, and on the other hand they are protected by the Act from what the legislature deemed to be not necessarily trivial, but improper or unnecessary prosecutions for libel." In either respect it has fallen short of the expectations reposed in it by the learned Judge.

Before dealing with the provisions of the Act of 1881, it is necessary to refer to the several Press Acts which were repealed, and those which still remain in force.

The Stationers Company was established by a charter of Philip and Mary, and it was the first legislative attempt at regulating the manner of printing and the number of presses that could be set up. The Long Parliament next interfered, and it licensed books, and in 1662, by 13 & 14 Chas. 2, c. 33, all printing without a license was forbidden. The First Copyright Act was the 7th Anne, c. 19, s. 4, imposing on the "Archbishop of Canterbury, the Chancellor, Chief Justices, and other high officials" the duty of settling the prices of books upon complaint that they be unreasonable, and inflicting a penalty of 5*l.* per book

for every volume sold at a higher price than that fixed. This law was repealed by 12 Geo. 2, c. 36. By 10 Anne, c. 19, a paper tax was imposed, being a duty upon every advertisement of 12*d.* and a tax of 1*d.* upon every copy of a newspaper. This was increased in 1820, but abolished in 1861. The advertisement duty, was abolished in 1855, and the duty on pamphlets removed by 3 & 4 Will. 4, c. 23. The newspaper duty by 4 Geo. 4, c. 98, was increased to 3½*d.* for every paper, and then it was in 1815 raised to 4*d.*, until 1836, when it was reduced to 1*d.*, till its abolition in 1870; and the size of newspapers also was restricted to a page 32 by 22 inches. The 6 Geo. 4, c. 119, repealed this curious law, and since any sized paper can be published free. These were the chief laws regulating the printing trade and the profession of journalism, but they are now all wisely abolished, and any person, whether an alien or an infant, can be a printer, and set up a printing press, and, except as regards newspapers, no registration is required, or in any case is any licensing necessary.

Printed Works (Imprint). As regards printed works, by the 32 & 33 Vict. c. 24, an imprint must be put to every work with certain exceptions specified in the schedule of the Act. The words of the statute are: "Every person who shall print any paper or book whatsoever which shall be meant to be published or dispersed, and who shall not print upon the front of every such paper if the same shall be printed on one side only, or upon the first or last leaf in legible characters, his or her usual place of abode or business, &c., and every person who shall publish or disperse, or assist in publishing or dispersing, any printed paper or book on which the name and place of abode of the

person printing the same shall not be printed as aforesaid, shall for every copy of such paper so printed by him or her forfeit a sum not more than 5*l*." The exceptions are engravings, business cards, papers for sale of estates or goods by auction or otherwise, bank notes, but not programmes or bills of fare. The penalty can, by 2 & 3 Vict. c. 12, s. 3, only be sued for by the Attorney-General.

The Corrupt Practices Act of 1883 as affecting Printers. A most important regulation concerning printed matter, and one the neglect of which is sure to lead to serious trouble, was introduced into the Corrupt Practices Act of 1883, the 18th sect. of which provides:—

"Every bill, placard or poster, having reference to an election, shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing or publishing or posting, or causing to be printed, published or posted any such bill, placard or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is a candidate or the election agent of the candidate, be guilty of an illegal practice, and if he is not the candidate or the election agent of a candidate shall be liable on summary conviction to a fine not exceeding one hundred pounds."

This stringent provision is often, through negligence or ignorance, overlooked by printers, but the greatest care should be observed not to do so. While on the subject, it may be added, that if a newspaper shall wrongfully state that a certain candidate before the electors has retired it can be made amenable to the law for its misstatement and held guilty of an illegal practice.

During the recent County Council elections several newspaper proprietors got into trouble through unwittingly committing offences under the Local Government Act and the Corrupt Practices Act, especially in regard to not affixing imprints on bills, posters, circulars, &c. One of these gentlemen was charged with falsely saying in his newspaper, without knowing with what truth, that a certain candidate was likely to withdraw from the contest for the County Council. Now, it may in the future be useful to know that any person who before or during a municipal or other election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice." (*Press News*, February, 1889.)

Preserving File Copies. A section of the Act of 39 Geo. 3, c. 79, sect. 29, imposes a penalty not reducible by a magistrate, and which may be recovered before any justice or justices of the peace where the defendant resides, or has his place of business, upon every person who printing any paper for hire, reward, gain or profit, shall omit or neglect to preserve carefully one copy at least of every paper so printed by him or her. "He shall also cause to be written or printed in fair and legible characters the name and place of abode of the person by whom he was employed to do such printing, and for every such neglect or omission he shall forfeit and lose the sum of 20*l*." This file copy is to be kept for six months, and the action is maintainable only for three months after the penalty is incurred (sect. 34), one moiety of the penalty going to the informer, the other to the Crown (sect. 35). To restrict vexatious prosecutions by private

persons for such offences, as above mentioned, the 9 & 10 Vict. c. 33, sect. 1, provides that no person shall be authorised to commence, prosecute, enter or file, or cause to be commenced, prosecuted, entered or filed any action, plaint or information for the recovery of these fines before any justice or justices of the peace under sect. 29 of Geo. 3 unless in the name of the Attorney-General.

What is a Newspaper (the Act of 1881). By the Newspaper Libel and Registration Act of 1881 (44 & 45 Vict. c. 60, sect. 1) a newspaper is described to be "any paper containing public news, intelligence or occurrences, or any remarks or observations thereon printed for sale and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two such papers, parts or numbers. Also any paper printed in order to be dispersed, and made public weekly or oftener or at intervals not exceeding twenty-six days, containing only or principally advertisements."

Particulars to be Registered. By the 9th section of the same Act (1881), the following particulars must be registered: (1) the title of the newspaper, (2) the names of all the proprietors of such newspapers together with their respective occupations, places of business (if any) and places of residence. In the schedule a return form is given, and this form is sent to each newspaper proprietor every year, and he is obliged to return it to the office with an accompanying fee of five shillings as the annual cost of registration. (See Appendix for form.)

Who is the Proprietor. In the one section the words "proprietor" and "occupation" are defined. By sect. 1 the proprietor is declared to "mean and include as well the sole proprietor of any newspaper, as also in case of a divided proprietorship the persons who, as partners or otherwise, represent and are responsible for any share or interest in the newspaper, as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person."

Representative Proprietors. Under sect. 7 leave may be granted, where a large number of proprietors are concerned, to register any number thereof as representative proprietors, the words of the section being: "Where in the opinion of the Board of Trade inconvenience would arise or be caused in any case from the registry of the names of all the proprietors of the newspaper (either owing to minority, coverture, absence from the United Kingdom, minute subdivision of shares or other special circumstances), it shall be lawful for the Board of Trade to authorise the registration of such newspaper in the name or names of one or more responsible representative proprietors.

As regards representative proprietors, the following rules are enforced, and are attached to the schedule of fees:—

Where it is desired to make a return of representative proprietors under sect. 7, a statement should be sent to the Registrar, setting forth the circumstances which render it inconvenient to register the names of all the proprietors, and giving such information as will show that the proposed representatives are well able to meet any claims that may arise from libel or otherwise in connection with the management of the paper.

No Registration of a Company. By sect. 18, where the newspaper is owned by a company registered under the Companies Acts, 1862–1879, it is not to be registered under this Act, as already pointed out, an obvious omission and a decided drawback.

Occupation of Proprietor. As regards occupation "the interpretation clause to sect. 1 provides that occupation shall be held to mean, when applied to "any person," his trade or following, and, if none, then his rank or usual title as esquire, gentleman.

When Returns must be Furnished. By sect. 9 the returns must be made out in the month of July in every year; and as there is no provision inserted for a compulsory registration of any change of proprietorship in the interim, there are no means of accurately knowing whether any such change has taken place since the time of actual registry. This is obviously a serious omission. If by the end of August, usually a month after the returns are filed, the return is not made as provided by the Act, the defaulting printer and publisher is liable to be brought before a magistrate and summarily convicted in a sum not exceeding 25*l.*, and an order can be made by the magistrates ordering the returns to be made out and supplied within any time specified by them. The effect of the defect in the Act is that a new newspaper, or an old one under a new name, may be started between the August when the return is completed and the following July, and during that time there is no imperative obligation on the proprietor to register.

Permissive Registration of Interim Changes. There is a permissive provision under sect. 11 by which

any transfer or change may be registered. It is as follows: "Any party to a transfer or transmission, or dealing with any share of or interest in any newspaper whereby any person ceases to be a proprietor or any new proprietor is introduced, may at any time make or cause to be made to the Registry Office a return according to Schedule B hereunto annexed, and containing the particulars therein set forth." This should be made compulsory, and a failure or neglect liable to the same penalties as a failure or neglect in the first instance. The value of the registration form or entry as evidence of proprietorship, &c., is through this fault illusory and not conclusive. The imprint to a paper usually contains only the name of the publisher, and will not supply the defect, and one is forced back on other proofs, which it may be difficult to adduce at the trial, and which this Act purported to render unnecessary.

Who is to Register. As to the person on whom the obligation of registration is cast, it is provided that the return must be made by "the printers and publishers for the time being of every newspaper," or in other words the persons whose names are usually on the imprint of the paper.

Penalties. By sect. 12 penalties not exceeding 100*l.* are exactable, and by sect. 13 it is competent to any person to inspect the returns, "and any one who pleases may, on payment of the proper fees, inspect the register and obtain certified copies of any entry therein." The fees for such copy of entry or for inspection of registry are 1s. respectively.

Entries to be Evidence. These official entries

are to be received as evidence in every Court, with, if desirable, any further or other proof, the words being "any or every certified copy or extract shall in all proceedings civil or criminal be accepted as sufficient *primâ facie* evidence of all matters and things thereby appearing, unless and until the contrary thereof be shewn" (sect. 15).

Prosecutions. The offences under the Act are punishable by any Court of summary jurisdiction. It is also provided that proceedings before the magistrates for any breach of the Act may be taken by any person not necessarily a public prosecutor.

Forms. The prescribed forms on which the returns are to be made will be sent either stamped with the requisite fee stamps or unstamped on application to the Registrar, Companies Registration Office, Somerset House, London, W.C. No charge is made for the forms, but when stamped forms are required a postal order for the amount of the fee must accompany the application.

A separate return will be required for each paper.

These are the principal provisions of the Act of 1881 dealing with registration. (See Appendix for full text of the Act.)

Cases under Act. Only a few cases are reported dealing with the question of registration and the difficulties arising therefrom in consequence of breaches thereof. In an action against the *Kent and Sussex Times*, decided before the Maidstone Justices in 1884, the objection was made that the offence of the non-registration was not committed in the town where the paper was published, but in Somerset House, London, the place of registry, and the Maidstone justices dismissed

the case on the grounds that they had no jurisdiction, and that the summons should be applied for at Bow Street. In another case in which J. W. Kenning, the proprietor of the *Midland Times*, was plaintiff, and James Hopewell, printer of the *Rugby Christian Observer*, was defendant for non-registration, and where the paper was published in July, but ceased to be published in August, it was held that a breach of the Act had been committed, and a nominal fee of 1*s.* was imposed. The paper was actually published in July, when the return should be made.

In *Cade* v. *The Devon and Exeter Constitutional Newspaper Co., Limited* (Ch. Div. Jan. 27, 1889), it was held that the republication of copyright matter under another name not registered did not deprive the owners of the right to restrain infringement of their copyright, that the three parties being jointly interested in the copyright were properly made parties, and that non-registration under Act of 1881 by the publisher did not deprive the owners of their copyright.

In an Irish case of *R.* v. *Harrington*, decided in the Exchequer Division on 21st Jan. 1889, the judgment of Palles, C.B., reviewed the whole question of registration as dealt with by the Newspaper Libel Act of 1881, and laid down most clearly the law upon the subject. By prisoner's counsel (Mr. Healy, M.P. B.L.) it was contended that the document given in evidence as proof of the registration of the prisoner as proprietor of the *Kerry Sentinel* was inadmissible, and it was suggested that the Court was bound to determine the case as if it had not been given in evidence; and it was argued secondly, that even if the document were properly admitted it was not evidence of publication by defendant as it purported only to be a true copy of the "Return" and not of the

"Register"; and, thirdly, that there was no evidence of the *mens rea* or criminal intent, that is, that the publication was with the view of furthering the illegal objects stated in the summons. The learned Chief Baron, in his judgment, remarked that "by the 15th sect. of the Act of 1881 the document was admissible in evidence, and that no objection to its admissibility could be taken. The words were: 'every copy of any entry in or extract from the register of newspaper proprietors purporting to be certified by the Registrar or his deputy for the time being, or under the official seal of the Registrar, shall be received as conclusive evidence of the contents of the said register of newspaper proprietors . . . . and every such certified copy or extract shall in all proceedings, civil or criminal, be accepted as sufficient *primâ facie* evidence of all the matters and things appearing, unless and until the contrary thereof be shown.' The document in question was a copy, certified as provided by the Act, of the return which was made under 9th sect., and registered under 13th sect., and if, upon the true construction of the Act, the return upon its registration became part of the register of newspaper proprietors, then a certified copy of it is a certified copy of a part of the register, that is, in law, of an entry in the register, and therefore admissible under the 15th sect. The 9th sect. imposes upon the printers and publishers for the time being of every newspaper the duty of making to the registry office a return of certain particulars according to Schedule A. thereunto annexed. The return must be in a tabular form, and in writing. The 12th sect. subjects to a penalty of 100*l.* any person who shall knowingly make any return in which shall be inserted the name of any person as proprietor who shall not be such, or in which there shall be any misrepresentation, or from which

there shall be any misleading by reason of the omission of any of the required particulars. A like penalty is imposed on a proprietor who shall knowingly permit any such misleading return to be made. The 13th sect. imposes on the Registrar the duty forthwith to register every return made in conformity with the provisions of this Act in a book to be kept for that purpose at the Registry Office, and called the Register of Newspaper Proprietors. The 14th sect. enables the Board of Trade, with the approval of the Treasury, to direct fees to be paid *inter alia* for the receipt and entry of returns made in conformity with the Act. In the latter section, entry of returns is, in my opinion, used to express the registration of returns, and therefore register in sect. 13 may be read 'enter.' It is, then, the duty of the Registrar, when he receives a return, to examine it and determine whether it is made in conformity with the Act, and, if so, then to 'enter' or 'register' it in a book. What is the return he is to enter? If it be the original document, signed by the printer and publisher, then the performance of the duty can be effected only by placing or filing that very document in the book so as to make it part of the book. If, on the other hand, 'return' in this section means the particulars contained in such return, then the section can be complied with, either by filing the original document or by copying into the book the words contained in it. The word 'return' occurs in five sections of the Act; four immediately precede the 13th, the 9th, 10th, 11th and 12th, and one follows, the 14th, and all of them are *in pari materiâ*. It is clear that in each of these five other sections 'return' is used as meaning the original document sent in to the Registrar. Sect. 9 directs return, of course the original return, to be made. Sect. 10

subjects every printer or publisher to a penalty if 'such returns' be not made; and sect. 11 authorises the party to a dealing with any share of or interest in a newspaper, which causes an alteration in the proprietorship, to make a return according to Schedule B. It is clear 'return' in 11, 12, and 14, means the original document sent in to the Registrar. Sect. 13 must be read in the same sense; we are asked to read it as if 'return' meant 'particulars contained in the return,' for, if the Registrar's duty can be discharged by copying the return into a book, then, what is entered is not the very return itself but a copy of it. Sect. 12 distinguishes between 'the particulars' and the 'return,' and treats particulars as being something contained in the return, and sect. 9 is of the same effect. The return is authenticated, and substantial error would involve penal consequences, and upon it the Legislature confers potency in evidence. The 'return' became, from the moment of its registration, part of the book, and the certified copy of that registered return is a certified copy of an entry in that book and therefore admissible."

The learned judge then held that it was *primâ facie* proof that the defendant was the proprietor of the paper, and furthermore that as such proprietor he was the publisher (see Chap. XI. p. 134). Dowse, B., and Andrews, J., concurred in the judgment.

Postage Regulations. While dealing with the subject of registration, it may be well to include here the provisions of the Post Office Act of 1870 (33 & 34 Vict. c. 79) which allow papers to go by post at the half-penny rate of postage. Sect. 6 provides that any publication coming within the following description shall for the purposes of this Act be deemed a news-

paper, that is to say any publication consisting wholly or in great part of political or other news, or of articles relating thereto, or to other current topics, with or without advertisements, subject to these conditions:—

That it be printed and published in the United Kingdom; that it be published in numbers at intervals of not more than seven days.

That it be printed on a sheet or sheets unstitched; that it have the full title and date of publication printed at the top of the first page, and the whole or part of the title, and the date of publication printed at the top of every subsequent page.

What is a Supplement. And the following shall for the purposes of this Act be deemed a supplement to a newspaper, that is to say, "a publication consisting wholly or in great part of matter, like that of a newspaper, or of advertisements printed on a sheet or sheets or a piece or pieces of paper unstitched, or consisting wholly or in part of engravings, prints or lithographs, illustrative of articles in the newspaper, such publication in every case being published with the newspaper, and having the title and date of publication of the newspaper printed at the top of every page or at the top of every sheet or side on which any such engraving, print, or lithograph appears." By 44 & 45 Vict. c. 19, the restriction to stitched papers is repealed, but not as to stitched supplements.

Registration at Post Office. By sect. 7 of the Post Office Act, 1870, 33 & 34 Vict. c. 79, it is provided that—

The proprietor or printer of any newspaper within the description aforesaid, and the proprietor or printer of any publication which regard being had to the pub-

lication of advertisements or other matter therein, not within the description aforesaid, but which was stamped as a newspaper before the passing of the Act lastly mentioned in the first schedule to this Act, may register it at the General Post Office in London at such time in each year, and in such form and with such particulars as the Postmaster-General from time to time directs, paying on each registration such fee, not exceeding five shillings, as the Postmaster-General with the approval of the Treasury from time to time directs. The Postmaster-General may from time to time revise the register and remove therefrom any publication not being a newspaper. The decision of the Postmaster-General on the admission to or removal from the register of a publication shall be final, save that the Treasury may if they think fit, on the application of any person interested, reverse or modify the decision, and order accordingly any publication for the time being on the register shall for the purposes of this Act be deemed a registered newspaper. By sect. 8 of same Act the rate of postage for each registered newspaper, with or without supplement, is fixed at a halfpenny, and by subsequent sections 9, 14, and 20, the Postmaster-General can make regulations regarding the time and mode of posting; the nature and form of covers; determining whether a publication is a newspaper or not; and preventing the transmission of indecent and obscene books, paintings, photographs, lithographs, books, cards of an obscene or grossly libellous character.

By 7 Will. 4., and 1 Vict. c. 36, sect. 5, any enclosures in newspapers of letters, papers, or things, or writing, unauthorised communications or words render the document liable to treble postage, the packet being considered a letter, and the Postmaster-

General has the option of prosecuting the party for a misdemeanour. 3 & 4 Vict. c. 96, sect. 12, allows stamped covers to be used; sect. 43 permits newspapers to be sent by post, and 31 and 32 Vict. c. 110, enables arrangements to be made for the transmission at a reduced rate of press telegraph messages.

Advertising stolen Property. The sect. 102 of the Larceny Act of 1861 (24 & 25 Vict. c. 96) has an important bearing on newspapers and merits quotation. It provides that whoever shall publicly advertise a reward for the return of any property whatsoever which shall have been stolen or lost, and shall in such advertisement "use any words purporting that no questions will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any property which shall have been stolen or lost without seizing or making inquiry after the person producing such property, or shall promise or offer in any such public advertisements to return to any pawnbroker or other person who may have bought or advanced money by way of loan upon any property stolen or lost, the money so paid or advanced or any other sums of money or reward for the return of such property, or shall print or publish any such advertisement, shall forfeit the sum of fifty pounds for every such offence to any person who will sue for the same by action of debt to be recovered with full costs of suit."

This law is somewhat too extensive, and though guarded still leaves it in the power of any person when such notice appears to recover the full penalty of a printer or even of a person who posts a notice to the like effect on a hoarding. It would also seem there is no power in the magistrates to reduce the penalty. A

certain qualified but not sufficient protection is afforded by sect. 3 of the 33 & 34 Vict. c. 65. It provides that "every action against the printer or publisher of a newspaper to recover a forfeiture under sect. 102 of the Larceny Act, 1861, shall be brought within six months after the forfeiture is incurred, and no such action against the printer or publisher of a newspaper shall be brought unless the assent in writing of Her Majesty's Attorney-General or Solicitor-General for England, or for Ireland if the action is brought in Ireland, has been first obtained to the bringing of such action." By sect. 2 of the same statute the word "newspaper" is defined in the Act to mean "a newspaper as defined for the purposes of the Acts for the time being in force relating to the carriage of newspapers by post" that is as defined in the Post Office Act, 1870. Advertisements, therefore, appearing in any publication not coming within that description are open to the attack and prosecution of any person so minded for any such notices, however unwittingly published or by the most inadvertent mistake inserted.

The Publication of Betting Notices. The several provisions of the statutes relating to betting notices are worthy of notice. The Act which chiefly deals with these classes of advertisements is the 37 Vict. c. 15. By sect. 1 it is provided that it shall be construed along with and as part of the 16 & 17 Vict. c. 119, entitled "an Act for the suppression of Betting Houses," therein called the principal Act.

Sect. 3 runs thus:—"Where any letter, circular, telegram, placard, handbill, or advertisement is sent, exhibited, or published—

"(1.) Where it is made to appear that any person, either in the United Kingdom or elsewhere, will on

application give information or advice for the purpose of or with respect to any such bet or wager, or any such event or contingency as is mentioned in the principal Act or will make on behalf of any other person any such bet or wager as is mentioned in the principal Act; or,

"(2.) With intent to induce any person to apply to any house, office, room, or place, or to any person with the view of obtaining information or advice, for the purpose of any such bet or wager, or with respect to any such event or contingency as is mentioned in the principal Act; or,

"(3.) Inviting any person to make or take share in or in connection with any bet or wager; every person sending, exhibiting, or publishing, or causing the same to be sent, exhibited, or published, shall be subject to the penalties provided in the seventh section of the principal Act, with respect to offences under that section. On reference to the Act 16 & 17 Vict. we find the penalties to be "on prosecution before justices of the peace to be fined a sum not exceeding 30*l.*, and made to pay the costs of the prosecution; and in default or in the first instance if the judges shall think fit, to be imprisoned with or without hard labour for a maximum period of two calendar months." The decision in the case of *Andrews* v. *Cox* of the *Licensed Victuallers' Gazette*, decided in 1883, and reported in 12 Q. B. D. 126, would lead us to the belief that the only advertisements cognisable under the Act are those of bets or wagers made in a house, room, office, or other place kept for the purpose of betting.

Lottery Advertisements. There are two principal Acts relating to lottery advertisements, the chief being 4 Geo. 4. c. 60. The sixth sect. of that Act is

"that if any person or persons shall sell any ticket or tickets, chance or chances, share or shares of any ticket or tickets, chance or chances, in any lottery or lotteries, authorised by any foreign potentate or state, or to be drawn in any foreign country, or in any lottery or lotteries, except such as shall be authorised by this or some other Act of Parliament to be sold, or shall publish any proposal or scheme for the sale of any ticket or tickets, chance or chances, share or shares of any ticket or tickets, chance or chances, except such lottery or lotteries as shall be authorised as aforesaid, such person shall for every such offence forfeit and pay the sum of 50*l.* and shall also be deemed a rogue and vagabond, or rogues and vagabonds, and shall be punished as such in the manner hereafter directed."

By another Act, 6 & 7 Will. 4, c. 66, it is set out in the preamble that "the laws in force are insufficient to prevent the advertising of foreign and other illegal lotteries in the kingdom and it is expedient to make further provision for that purpose." The enacting part then runs as follows: "that from and after the passing of the Act, if any person shall print or publish, or cause to be printed or published any advertisement, or other notice of or relating to the drawing or intended drawing of any foreign lottery, or of any lottery or lotteries not authorised by some Act or Acts of Parliament; or if any person shall print or publish or cause to be printed or published any advertisement, or other notice of or for the sale of any ticket or tickets, chance or chances, or of any share or shares of any ticket or tickets, chance or chances of or in any lottery or lotteries as aforesaid, or any advertisement or notice concerning or in any other manner relating to any such lottery or lotteries, or any ticket, chance, or share-tickets, chances, or shares thereof or therein; every

person so offending shall for every such offence forfeit the sum of 50*l.*, to be recovered with full costs; of which, by action of debt by plaint or information in any of his Majesty's Courts of Record in Westminster, or Dublin respectively, or in the Court of Session in Scotland one moiety thereof to the use of his Majesty, his heirs and successors, and the other moiety thereof to the use of the person who shall inform or sue for the same." The only excepted lotteries are the Art Union drawings, legalised by 9 & 10 Vict. c. 48, and otherwise the Acts relate to all lotteries foreign and domestic. By the 8 & 9 Vict. c. 74, a wholesome change was made by which all the penalty goes to the Crown, and the action must be at the prosecution of the law officers of the Crown. There is an unreported case where the *Nottingham Evening Post* was in 1883 prosecuted for publishing an advertisement about a Christmas lottery, but as it was inserted by inadvertence the defendant was let off on his paying the costs of the prosecution.

A very useful Act was passed in the session of 1889 called the Indecent Advertisements Act. Under its provisions any person affixing any picture or printed or written matter of an indecent or obscene character on any buildings or hoardings so as to be visible to persons using a public highway or footpath, or giving such pictures or matter away in the streets or exhibiting them in shop windows, shall be liable to a penalty of 40*s.* or one month's imprisonment, and if such persons employ agents to do this kind of work the penalty is increased to 5*l.* or three months' imprisonment.

These are the laws regulating and restricting the publication of advertisements or such like notices by newspapers, and except that they exist on the statute

book, very little is practically heard of these little used, if not disused, enactments.

COPYRIGHT.

It appears necessary to append a few short notes upon the important subject of copyright, and, without going into the general question, to treat of it solely in those aspects which affect newspaper proprietors and publishers. The old statute of Anne and subsequent enactments have been repealed by the 4 & 5 Vict. c. 45, which now regulates the matter, and under the provisions of which any book (which for the purposes of the Act shall be deemed to apply to every pamphlet, sheet of letterpress, sheet of music, map, chart, or plan) published in the lifetime of the author shall endure for his natural life, and for the further term of seven years from his death, and shall be his property and of his assigns but if the term of seven years shall expire before the end of *forty-two* years from the first publication of the book, in that case the copyright shall endure for the term of forty-two years, and the copyright in every book published after the death of the author shall endure for forty-two years from the *first* publication (sec. 3). And as regards encyclopædias, reviews, and other periodical works it is provided the copyright in every article shall belong to the proprietor of the work for the same term as is given by the Act to authors of books, whenever any such article shall have been, or shall be, composed on the terms that the copyright therein shall belong to such proprietor and be paid for by him (*Bishop of Hereford* v. *Griffin* (16 Sim. 190); *Sweet* v. *Benning* (16 C. B. 459); *Richardson* v. *Gilbert* (1 Sim. N. S. 336)). Payment must be actually

made before the copyright will vest, and after the term of *twenty-eight* years the right of publishing the same article shall revert to the author for the remainder of the term given by the Act, and no publisher can publish the article after the *twenty-eight* years have expired without the consent of the author. The writer can in the first instance reserve the right of separate republication, and he will be entitled to the copyright in such composition without prejudice to the right of the proprietor of the review or other periodical in which it appeared. A Register of all copyrighted works is kept at Stationers' Hall, which is open to the public on payment of a small fee, and in the register is entered the proprietorship or assignment of every copyright (Stat. 5 & 6 Vict. c. 45, ss. 11, 13, 19, 20). The date of first publication must be distinctly and specifically stated (*Mathieson* v. *Harrod*, V. C. M., L. R. 7 Eq. 270; *Page* v. *Wisden*, V. C. M. 17 W. R. 483). It is not enough for this purpose to register the month, or the year, or any other general entry, but the exact date is necessary, and from such date the allotted period of prescription runs. In a recent case of *Collingridge* v. *Emmott* (57 L. T. 864), this was ruled as also that for the purpose of successfully maintaining an action for infringement, the copyrighted matter should have been actually paid for.

To secure an absolute right in the use of the name of any newspaper so that such name may be exclusively used, and any imitation restrained and infringement prevented, the name must be an established one, have been for sometime in use, and known as connected and identified with the newspaper. Thus where a newspaper was published with the same title as one three days previously published, and which latter was issued without notice or advertisement, the Court of Appeal

last year held (affirming the decision of North, J.) that registration in Stationers' Hall gave the plaintiff no exclusive right to the name as such, and that a title to it by user and reputation could not be acquired by a publication with a small sale, and but a few days previously issued (*Licensed Victuallers' Co.* v. *Bingham*, 38 Ch. D. 139; 58 L. J. Ch. 36; 59 L. J. 187). And where the publisher of a newspaper called the *Grocer* had attached formerly to it a supplement which they had lately incorporated with the journal under the common title of the *Grocer and Oil Trade Review*, and registered as such, sought to prevent the publication in Dublin of a bi-monthly paper, called *The Grocer and Wine Merchant, and Irish Brewer and Distiller*, intended to advocate the interest of a different branch of the trade, the Court granted a perpetual injunction restraining the use of the name or term *Grocer* as the first or principal part of the title of said paper (*Reed* v. *O'Meara*, 21 L. R. Ir. 216).

The "Power of the Press."—The following short statistics are significant. There were in 1888 the number of 3,778 papers, &c., published in the United Kingdom, so distributed and classified:—MORNING PAPERS:—in London, 20; in the Provinces of England, 38; in Wales, 3; Scotland, 9, and Ireland, 12. EVENING PAPERS:—London, 14; English Provinces, 82; Wales, 3; Scotland, 11; Ireland, 6; British Isles, 1. WEEKLY PAPERS:—London, 701; English Provinces, 1,247; Wales, 81; Scotland, 210; Ireland, 173; British Isles, 20. MAGAZINES, PERIODICALS, &c.—London, 845; Provinces, 302. Total 3,778.

APPENDIX I.

ALL THE LIBEL ACTS.

(1.) The chief provisions of FOX'S ACT (6 Geo. 3, c. 116), will be found in Chap. IX., under head of Seditious Libels.

(2.) LORD CAMPBELL'S ACT (6 & 7 Vict. cap. 96).

An Act to amend the Law respecting defamatory Words and Libel. [24th *August*, 1843.]

FOR the better Protection of private Character, and for more effectually securing the Liberty of the Press, and for better preventing Abuses in exercising the said Liberty: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in any Action for Defamation it shall be lawful for the Defendant (after Notice in Writing of his Intention so to do, duly given to the Plaintiff at the Time of filing or delivering the Plea in such Action,) to give in Evidence, in mitigation of Damages, that he made or offered an Apology to the Plaintiff for such Defamation before the Commencement of the Action, or as soon afterwards as he had an Opportunity of doing so, in case the Action shall have been commenced before there was an Opportunity of making or offering such Apology.

Offer of an Apology admissible in Evidence in mitigation of Damages.

II. And be it enacted, That in an Action for a Libel contained in any public Newspaper or other periodical Publication it shall be competent to the Defendant to plead that such Libel was inserted in such Newspaper or other periodical Publication without actual malice, and without gross Negligence, and that

In an Action against a Newspaper for Libel, the Defen-

before the Commencement of the Action, or at the earliest Opportunity afterwards, he inserted in such Newspaper or other periodical Publication a full Apology for the said Libel, or, if the Newspaper or periodical Publication in which the said Libel appeared should be ordinarily published at Intervals exceeding One Week, had offered to publish the said Apology in any Newspaper or periodical Publication to be selected by the Plaintiff in such Action; and that every such Defendant shall upon filing such Plea be at liberty to pay into Court a Sum of Money by way of Amends for the Injury sustained by the Publication of such Libel, and such Payment into Court shall be of the same Effect and be available in the same Manner and to the same Extent, and be subject to the same Rules and Regulations as to Payment of Costs and the Form of Pleading, except so far as regards the pleading of the additional Facts herein-before required to be pleaded by such Defendant, as if Actions for Libel had not been excepted from the personal Actions in which it is lawful to pay Money into Court under an Act passed in the Session of Parliament held in the Fourth Year of His late Majesty, intituled *An Act for the further Amendment of the Law and the better Advancement of Justice*; and that to such Plea to such Action it shall be competent to the Plaintiff to reply generally, denying the whole of such Plea.

Defendant may plead that it was inserted without Malice and without Neglect, and may pay Money into Court as Amends.

3 & 4 W. 4. c. 42.

III. And be it enacted, That if any Person shall publish or threaten to publish any Libel upon any other Person, or shall directly or indirectly threaten to print or publish, or shall directly or indirectly propose to abstain from printing or publishing, or shall directly or indirectly offer to prevent the printing or publishing, of any Matter or Thing touching any other Person, with intent to extort any Money or Security for Money, or any valuable Thing from such or any other Person, or with intent to induce any Person to confer or procure for any Person any Appointment or Office of Profit or Trust, every such Offender, on being convicted thereof, shall be liable to be imprisoned, with or without Hard Labour, in the Common Gaol or House of Correction, for any Term not exceeding Three Years: Provided always, that nothing herein contained

Publishing or threatening to publish a Libel, or proposing to abstain from publishing any thing, with Intent to extort Money, punishable by Imprisonment and Hard Labour.

shall in any Manner alter or affect any Law now in force in respect of the sending or Delivery of threatening Letters or Writings.

False defamatory Libel punishable by Imprisonment and Fine;

IV. And be it enacted, That if any Person shall maliciously publish any defamatory Libel knowing the same to be false, every such person, being convicted thereof, shall be liable to be imprisoned in the Common Gaol or House of Correction for any Term not exceeding Two Years, and to pay such Fine as the Court shall award.

Malicious defamatory Libel, by Imprisonment or Fine.

V. And be it enacted, That if any person shall maliciously publish any defamatory Libel, every such Person, being convicted thereof, shall be liable to Fine or Imprisonment, or both, as the Court may award, such Imprisonment not to exceed the Term of One Year.

Proceedings upon the Trial of an Indictment or Information for a defamatory Libel.

VI. And be it enacted, That on the Trial of any Indictment or Information for a defamatory Libel, the Defendant having pleaded such Plea as herein-after mentioned, the Truth of the Matters charged may be inquired into, but shall not amount to a Defence, unless it was for the Public Benefit that the said Matters charged should be published; and that to entitle the Defendant to give Evidence of the Truth of such Matters charged as a Defence to such Indictment or Information it shall be necessary for the Defendant, in pleading to the said Indictment or Information, to allege the Truth of the said Matters charged in the Manner now required in pleading a Justification to an Action for Defamation, and further to allege that it was for the Public Benefit that the said Matters charged should be published, and the particular Fact or Facts by reason whereof it was for the Public Benefit that the said Matters charged should be published, to which Plea the Prosecutor shall be at liberty to reply generally, denying the whole thereof; and that if after such Plea the Defendant shall be convicted on such Indictment or Information it shall be competent to the Court, in pronouncing Sentence, to consider whether the Guilt of the Defendant is aggravated or mitigated by the said Plea, and by the Evidence given to prove or to disprove the same: Provided always, that the Truth of the Matters charged in the alleged Libel complained of by such Indictment or Information shall

in no case be inquired into without such Plea of Justification: Provided also, that in addition to such Plea, it shall be competent to the Defendant to plead a Plea of Not Guilty: Provided also, that nothing in this Act contained shall take away or prejudice any Defence under the Plea of Not Guilty which it is now competent to the Defendant to make under such Plea to any Action or Indictment or Information for defamatory Words or Libel.

Double Plea.

Proviso as to Plea of Not Guilty in Civil and Criminal Proceedings.

VII. And be it enacted, That whensoever upon the Trial of any Indictment or Information for the Publication of a Libel, under the Plea of Not Guilty, Evidence shall have been given which shall establish a presumptive Case of Publication against the Defendant by the Act of any other person by his Authority, it shall be competent to such Defendant to prove that such Publication was made without his Authority, Consent, or Knowledge, and that the said Publication did not arise from Want of due Care or Caution on his Part.

Evidence to rebut *primâ facie* Case of Publication by an Agent.

VIII. And be it enacted, That in the Case of any Indictment or Information by a private Prosecutor for the Publication of any defamatory Libel, if Judgment shall be given for the Defendant, he shall be entitled to recover from the Prosecutor the Costs sustained by the said Defendant by reason of such Indictment or Information; and that upon a special Plea of Justification to such Indictment or Information, if the Issue be found for the Prosecutor, he shall be entitled to recover from the Defendant the Costs sustained by the Prosecutor by reason of such plea, such costs so to be recovered by the Defendant or Prosecutor respectively to be taxed by the proper Officer of the Court before which the said Indictment or Information is tried.

On Prosecution for private Libel, Defendant entitled to Costs on Acquittal.

IX. And be it enacted, That wherever throughout this Act, in describing the Plaintiff or the Defendant, or the Party affected or intended to be affected by the Offence, Words are used importing the Singular Number or the Masculine Gender only, yet they shall be understood to include several Persons as well as one Person, and Females as well as Males, unless when the Nature of the Provision or the Context of the Act shall exclude such Construction.

Interpretation of Act.

Commencement and Extent of Act.

X. And be it enacted, That this Act shall take effect from the First Day of *November* next; and that nothing in this Act contained shall extend to *Scotland*.

31 & 32 Vict. c. 96.

An Act to assimilate the law in Ireland to the law in England as to costs in actions of libel (31 & 32 Vict. c. 60): Whereas it is expedient to assimilate the law in Ireland to the law in England as to costs in actions of libel: Be it enacted by the Queen's Most Excellent Majesty by and with the advice of and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same as follows:

1. In all actions for libel where the jury shall give damages under Forty Shillings the plaintiff shall not be entitled to more costs than damages unless the judge before whom such verdict shall be obtained shall immediately afterwards certify on the back of the record that the libel was wilful and malicious.

2. This Act shall not apply to England and Scotland, and for all purposes may be cited as the Libel Act (Ireland) 1868.

NEWSPAPER LIBEL AND REGISTRATION ACT, 1881.

(44 & 45 Vict. cap. 60.)

A.D. 1881. An Act to amend the Law of Newspaper Libel, and to provide for the Registration of Newspaper Proprietors.

[27th *August*, 1881.]

Whereas it is expedient to amend the law affecting civil actions and criminal prosecutions for newspaper libel:

And whereas it is also expedient to provide for the registration of newspaper proprietors:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Interpretation.

1. In the construction of this Act, unless there is anything

in the subject or context repugnant thereto, the several words and phrases herein-after mentioned shall have and include the meanings following; (that is to say,)

The word "registrar" shall mean in England the registrar for the time being of joint stock companies, or such person as the Board of Trade may for the time being authorise in that behalf, and in Ireland the assistant registrar for the time being of joint stock companies for Ireland, or such person as the Board of Trade may for the time being authorise in that behalf.

The phrase "registry office" shall mean the principal office for the time being of the registrar in England or Ireland, as the case may be, or such other office as the Board of Trade may from time to time appoint.

The word "newspaper" shall mean any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale, and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two such papers, parts, or numbers.

Also any paper printed in order to be dispersed, and made public weekly or oftener, or at intervals not exceeding twenty-six days, containing only or principally advertisements.

The word "occupation" when applied to any person shall mean his trade or following, and if none, then his rank or usual title, as esquire, gentleman.

The phrase "place of residence" shall include the street, square, or place where the person to whom it refers shall reside, and the number (if any) or other designation of the house in which he shall so reside.

The word "proprietor" shall mean and include as well the sole proprietor of any newspaper, as also in the case of a divided proprietorship the persons who, as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person.

Newspaper reports of certain meetings privileged.

2. Any report published in any newspaper of the proceedings of a public meeting shall be privileged, if such meeting was lawfully convened for a lawful purpose and open to the public, and if such report was fair and accurate, and published without malice, and if the publication of the matter complained of was for the public benefit; provided always, that the protection intended to be afforded by this section shall not be available as a defence in any proceeding, if the plaintiff or prosecutor can show that the defendant has refused to insert in the newspaper in which the report containing the matter complained of appeared, a reasonable letter or statement of explanation or contradiction by or on behalf of such plaintiff or prosecutor.

No prosecution for newspaper libel without fiat of Attorney-General.

3. No criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein, without the written fiat or allowance of the Director of Public Prosecutions in England or Her Majesty's Attorney-General in Ireland being first had and obtained.

Inquiry by court of summary jurisdiction as to libel being for public benefit or being true.

4. A court of summary jurisdiction, upon the hearing of a charge against a proprietor, publisher, or editor, or any person responsible for the publication of a newspaper, for a libel published therein, may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate, and published without malice, and as to any matter which under this or any other Act, or otherwise, might be given in evidence by way of defence by the person charged on his trial on indictment, and the court, if of opinion after hearing such evidence that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case.

Provision as to summary conviction for libel.

5. If a court of summary jurisdiction upon the hearing of a charge against a proprietor, publisher, editor, or any person responsible for the publication of a newspaper for a libel published therein is of opinion that though the person charged is shown to have been guilty the libel was of a trivial character, and that the offence may be adequately punished by virtue of the powers of this section, the court shall cause the charge to be

reduced into writing and read to the person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury or do you consent to the case being dealt with summarily?" and, if such person assents to the case being dealt with summarily, the court may summarily convict him and adjudge him to pay a fine not exceeding fifty pounds.

Section twenty-seven of the Summary Jurisdiction Act, 1879, shall, so far as is consistent with the tenor thereof, apply to every such proceeding as if it were herein enacted and extended to Ireland, and as if the Summary Jurisdiction Acts were therein referred to instead of the Summary Jurisdiction Act, 1848. 42 & 43 Vict. c. 49. 11 & 12 Vict. c. 43.

6. Every libel or alleged libel, and every offence under this Act, shall be deemed to be an offence within and subject to the provisions of the Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter seventeen, intituled "An Act to prevent vexatious indictments for certain misdemeanors." 22 & 23 Vict. c. 17. made applicable to this Act.

7. Where, in the opinion of the Board of Trade, inconvenience would arise or be caused in any case from the registry of the names of all the proprietors of the newspaper (either owing to minority, coverture, absence from the United Kingdom, minute subdivision of shares, or other special circumstances), it shall be lawful for the Board of Trade to authorise the registration of such newspaper in the name or names of some one or more responsible "representative proprietors." Board of Trade may authorise registration of the names of only a portion of the proprietors of a newspaper.

8. A register of the proprietors of newspapers as defined by this Act shall be established under the superintendence of the registrar. Register of newspaper proprietors to be established.

9. It shall be the duty of the printers and publishers for the time being of every newspaper to make or cause to be made to the Registry Office on or before the thirty-first of July one thousand eight hundred and eighty-one, and thereafter annually in the month of July in every year, a return of the following particulars according to the Schedule A. hereunto annexed; that is to say, Annual returns to be made.

(*a.*) The title of a newspaper:

(*b.*) The names of all the proprietors of such newspaper together with their respective occupations, places of business (if any), and places of residence.

Penalty for omission to make annual returns.

10. If within the further period of one month after the time herein-before appointed for the making of any return as to any newspaper such return be not made, then each printer and publisher of such newspaper shall, on conviction thereof, be liable to a penalty not exceeding twenty-five pounds, and also to be directed by a summary order to make a return within a specified time.

Power to party to make return.

11. Any party to a transfer or transmission of or dealing with any share of or interest in any newspaper whereby any person ceases to be a proprietor or any new proprietor is introduced may at any time make or cause to be made to the Registry Office a return according to the Schedule B. hereunto annexed and containing the particulars therein set forth.

Penalty for wilful misrepresentation in or omission from return.

12. If any person shall knowingly and wilfully make or cause to be made any return by this Act required or permitted to be made in which shall be inserted or set forth the name of any person as a proprietor of a newspaper who shall not be a proprietor thereof, or in which there shall be any misrepresentation, or from which there shall be any omission in respect of any of the particulars by this Act required to be contained therein whereby such return shall be misleading, or if any proprietor of a newspaper shall knowingly and wilfully permit any such return to be made which shall be misleading as to any of the particulars with reference to his own name, occupation, place of business (if any), or place of residence, then and in every such case every such offender being convicted thereof shall be liable to a penalty not exceeding one hundred pounds.

Registrar to enter returns in register.

13. It shall be the duty of the registrar and he is hereby required forthwith to register every return made in conformity with the provisions of this Act in a book to be kept for that purpose at the Registry Office and called "the register of newspaper proprietors," and all persons shall be at liberty to search and inspect the said book from time to time during the hours of

business at the Registry Office, and any person may require a copy of any entry in or an extract from the book to be certified by the registrar or his deputy for the time being or under the official seal of the registrar.

able for registrar's services.

14. There shall be paid in respect of the receipt and entry of returns made in conformity with the provisions of this Act, and for the inspection of the register of newspaper proprietors, and for certified copies of any entry therein, and in respect of any other services to be performed by the registrar, such fees (if any) as the Board of Trade with the approval of the Treasury may direct and as they shall deem requisite to defray as well the additional expenses of the Registry Office caused by the provisions of this Act, as also the further remunerations and salaries (if any) of the registrar, and of any other persons employed under him in the execution of this Act, and such fees shall be dealt with as the Treasury may direct.

Copies of entries in and extracts from register to be evidence.

15. Every copy of an entry in or extract from the register of newspaper proprietors, purporting to be certified by the registrar or his deputy for the time being, or under the official seal of the registrar, shall be received as conclusive evidence of the contents of the said register of newspaper proprietors, so far as the same appear in such copy or extract without proof of the signature thereto or of the seal of office affixed thereto, and every such certified copy or extract shall in all proceedings, civil or criminal, be accepted as sufficient primâ facie evidence of all the matters and things thereby appearing, unless and until the contrary thereof be shown.

Recovery of penalties and enforcement of orders.

16. All penalties under this Act may be recovered before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Summary orders under this Act may be made by a court of summary jurisdiction, and enforced in manner provided by section thirty-four of the Summary Jurisdiction Act, 1879; and, for the purposes of this Act, that section shall be deemed to apply to Ireland in the same manner as if it were re-enacted in this Act.

Definitions.

17. The expression "a court of summary jurisdiction" has in England the meanings assigned to it by the Summary Jurisdic-

tion Act, 1879; and in Ireland means any justice or justices of the peace, stipendiary or other magistrate or magistrates, having jurisdiction under the Summary Jurisdiction Acts.

14 & 15 Vict c. 93.

The expression "Summary Jurisdiction Acts" has as regards England the meanings assigned to it by the Summary Jurisdiction Act, 1879; and, as regards Ireland, means within the police district of Dublin metropolis the Acts regulating the powers and duties of justices of the peace for such district, or of the police of that district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

Provisions as to registration of newspaper proprietors not to apply to newspaper belonging to a joint stock company.

18. The provisions as to the registration of newspaper proprietors contained in this Act shall not apply to the case of any newspaper which belongs to a joint stock company duly incorporated under and subject to the provisions of the Companies Acts, 1862 to 1879.

25 & 26 Vict c. 89, &c. Act not to extend to Scotland.

19. This Act shall not extend to Scotland.

Short title.

20. This Act may for all purposes be cited as the Newspaper Libel and Registration Act, 1881.

The SCHEDULES to which this Act refers.—

SCHEDULE A.

Return made pursuant to the Newspaper Libel and Registration Act, 1881.

Title of the Newspaper	Names of the Proprietors	Occupations of the Proprietors	Places of business of the Proprietors	Places of Residence of the Proprietors.

SCHEDULE B.

Return made pursuant to the Newspaper Libel and Registration Act, 1881.

Title of Newspaper.	Names of Persons who cease to be Proprietors.	Names of persons who become Proprietors.	Occupation of new Proprietors.	Places of business (if any) of new Proprietors.	Places of Residence of new Proprietors.

The full text of the Act of 1888 will be found on page 186.

APPENDIX II.

THE QUESTION OF PRIVILEGED REPORTS. THE MOST RECENT DECISION.

Allbutt v. *The General Council of Medical Education.*

THE Court of Appeal on 6th July, 1889, decided a very important case involving matters of much interest as to the privileges of the Press. The particular point raised was whether if a medical man were struck off the register of medical men by the council for any cause, and that they publish the fact and the reasons of such withdrawal, he can have their decision reheard, reconsidered and reviewed, on application for a mandamus to restore him, or whether he can maintain an action against them for libel for such publication. The Court of Appeal, following and upholding the decision of Pollock, B., held he was not so entitled, and the principles and reasons upon which they grounded such decision deal with and admit of application to the proceedings of all public bodies in matters of public interest. They held that no grounds lay for applying for a mandamus, nor did an action for damages for libel lie for the publication in question. In delivering the well-considered judgment of the Court (the two Lords Justices and Coleridge, C.J.), Lopes, L. J., remarked that "the report is a report of proceedings which actually took place within the jurisdiction of the council, a *bonâ fide* true report, without any sinister motive, of a matter of a public nature, of proceedings in which the public are interested, and in respect to which they are entitled to information. New and important bodies were from time to time constituted by the Legislature, such, for instance, as the London County Council and other county councils throughout the country, bodies to whom the most important duties are intrusted, duties in which the community at large are interested. Is it to be said that a *bonâ fide* honest and accurate report of the proceedings of these

bodies is not privileged, because in the course of the proceedings the character or conduct of individuals is impugned? Such a result would be most mischievous; it would impede the free action of these bodies and deprive the public of information to which, in our opinion, they are entitled. If the report had simply been a report of the fact that the plaintiff's name had been erased, we cannot think it would have been contended that the report was not privileged. It is said, because the nature of the offence is stated, the privilege is lost. In our opinion the council were fully justified in stating the cause of the erasure. It might have been said it was unfair to publish part of the proceedings only. Again, if they had published too much, this would not destroy the privilege; it might be evidence of express malice, but it is admitted there was no such malice. It is also said that the privilege is lost because there has been a publication to the public at large, to a class beyond those interested in the matter; but this I have disposed of, because, in our opinion, the public at large were interested in these proceedings, and their publication was information to which the public were entitled. There is an American decision—*Burrows* v. *Bell* (2 Gray's Massachusetts Reports)—very similar to the present case, where it was held that the publication by a member of the Massachusetts Medical Society of a true account of the proceedings of that society in the expulsion of another member for a cause within its jurisdiction was privileged. The decision is instructive, and is entirely in accordance with the views we have expressed. In *Whiteley* v. *Adams* (18 C. B. N. S. 398) Erle, C. J., said: 'Judges who have had from time to time to deal with questions as to whether the occasion justified the speaking or the writing of defamatory matter have all felt great difficulty in defining what kind of social or moral duty, or what amount of interest, will afford a justification, but all are clear it is a question for the Judge to decide.' This action is, in truth, an attempt to have the decision of the council reviewed by another tribunal. We express no opinion on that decision. It cannot be reviewed directly, and this attempt to review it indirectly cannot succeed. We have come to the conclusion that the publication of these proceedings, being true, accurate, and *bonâ fide*, is privileged, and

that the learned Judge was right in holding that there was no question which he ought to leave to the jury, and in giving judgment for the defendants. The appeal must be dismissed, with costs."

CONTEMPT OF COURT.

In a case of *Hunt* v. *Clarke*, *In re O'Malley*, for publishing a cause list and remarks thereon, referred to in page 48, the question was reviewed and decided by the Court of Appeal on the 6th July, and, in reversing the ruling of Grantham, J., Cotton, L.J., delivering the judgment of the Court, remarked that, "He could not quite agree with the view of the Court below in not considering that this paragraph was a contempt of Court. Technically it was a contempt. The rule of law laid down by Lord Hardwicke and often acted upon in a case (without a name) reported in 2 Atkyn's Reports, at p. 469, was that there may be a contempt of Court in prejudicing the minds of the public against persons concerned as parties in causes before the cause is finally heard. In his (Lord Justice Cotton's) opinion, it did amount to a contempt of Court to publish anything which was calculated to prejudice the minds of the public against the parties to a cause, and his Lordship thought that any one so guilty would be liable to be committed for contempt of Court, and in a proper case he himself would not hesitate to commit to prison any one who so offended. But it was in extreme cases only that the jurisdiction to commit should be exercised. It should not be exercised, his Lordship thought, unless the observations published were of such a character as to amount not only to a technical contempt, but something serious enough to induce the Court to interfere by committing for contempt. It did not follow that the Court would always be prejudiced by the observations published, but if they were calculated to prejudice that would be sufficient. But was there anything in those statements which would prejudice the fair trial of the action? His Lordship had already expressed his own opinion on the subject of committing for contempt in the case of *The Plating Company* v. *Farquharson* (Law Rep. 17 Ch.

Div., 49–56), and he adhered to what he then said—namely, that the Court should not punish for contempt unless a serious offence had been committed. His remarks had been approved of by Sir George Jessel, Master of the Rolls, and Lord Justice James. Not only might he refer to that case, but he would also refer to the case of *Clements* v. *Erlanger* (46 L. J. Ch., 375–383), where the late Master of the Rolls, Sir George Jessel, had said this:—'It seems to me that this jurisdiction of committing for contempt, being practically arbitrary and unlimited, should be most jealously and carefully watched, and exercised, if I may say so, with the greatest reluctance and the greatest anxiety on the part of the Judges to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear on the subject. I say that a Judge should be most careful to see that the cause cannot be fairly prosecuted to a hearing unless this extreme mode of dealing with persons, brought before him on accusations of contempt, should be adopted.' Those observations he would apply and adopt as a principle. There should be no application made to commit unless the thing done was of such a nature as to render the exercise of the jurisdiction of the Court necessary. In his Lordship's opinion, although there was here, technically speaking, a contempt, yet he did not think that there was any such interference with the conduct of the action as would prejudice the parties or the fair trial of the action. In his opinion, no such application as the present ought to have been made to the Court asking it to exercise its summary jurisdiction. On that point he was unable to differ from the view taken by the Court below. Although this Court did not in any way vary what had been done by the Court below, yet, to show that this Court did not approve of the observations which had appeared in the newspaper respecting this action, no costs of the unsuccessful appeal would be allowed. In other words, the appeal would be dismissed, but without costs."

LORDS JUSTICES FRY and LOPES gave judgment to the same effect (*Times* L. Reports, July 8, 1889).

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